

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TENNESSEE
3 AT KNOXVILLE, TENNESSEE

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5 SNMP RESEARCH, INC. and SNMP
6 RESEARCH INTERNATIONAL, INC.,

7 Plaintiffs,

8 vs.

9 EXTREME NETWORKS, INC.,

10 Defendant.
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) Case No. 3:20-cv-451
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13 **ELECTRONICALLY-RECORDED MOTION HEARING**
14 **BEFORE THE HONORABLE DEBRA C. POPLIN**

15 **Monday, February 26, 2024**
16 **10:30 a.m. to 5:14 p.m.**

17 **APPEARANCES:**

18 **ON BEHALF OF THE PLAINTIFF:**

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ON BEHALF OF THE DEFENDANT:

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1 THE COURTROOM DEPUTY: All rise.

2 This court is now in session with the Honorable
3 Debra C. Poplin, United States Magistrate Judge,
4 presiding.

5 Please come to order and be seated.

6 We are here for a scheduled motion hearing in
7 Case No. 3:20-cv-451, SNMP Research, Incorporated versus
8 Extreme Networks, Incorporated.

9 Here on behalf of the plaintiffs are John Wood,
10 Olivia Weber and Cheryl Rice.

11 Are the plaintiffs ready to proceed?

12 MR. WOOD: Yes.

13 THE COURT: Good morning.

14 THE COURTROOM DEPUTY: And here on behalf of
15 the defendants are Saurabh Prabhakar and Charles Lee.

16 Are the defendants ready to proceed?

17 MR. LEE: Yes, we are.

18 THE COURT: All right. Good morning to you
19 all, and thank you for agreeing to come a little bit
20 earlier. Once I saw everything we had to go through, it
21 may benefit us all to have a little bit of extra time
22 and hopefully we can get finished a little earlier in
23 the afternoon.

24 I will -- we will take a few brief breaks and
25 an abbreviated lunch break, and we'll just kind of set

1 that as we go along and see where we are in handling all
2 of the issues.

3 Okay. If we could start with -- I'm going
4 to -- I'm going to reference this as the first issue.
5 This is Extreme's claim that plaintiffs' document
6 production is insufficient with the first topic being
7 the RFP Nos. 50 through 55 and 58, and these are
8 relating to the plaintiffs' prior copyright litigations
9 against Nortel and Avaya.

10 So, let's see. Mr. Prabhakar, do you want to
11 address this?

12 MR. PRABHAKAR: Yes, Your Honor. Thank you.

13 THE COURT: And I'm not ignoring you. I just
14 need to get logged on. If you'll give me just a second.

15 MR. PRABHAKAR: I could use the --

16 THE COURT: And you can get your materials
17 settled.

18 MR. PRABHAKAR: I could use the extra time
19 myself.

20 THE COURT: All right. Thank you.

21 MR. PRABHAKAR: Of course, Your Honor.

22 THE COURT: All right. So, I've read through
23 all of the materials, and I guess the first question I
24 want to ask, and this is actually for Mr. Wood before he
25 starts, does SNMP Research admit that the litigations

1 involve the same copyrighted software?

2 MR. WOOD: Yes, Your Honor, the registrations
3 are the same. The license agreements are different.

4 THE COURT: I'm sorry?

5 MR. WOOD: The copyright registrations are the
6 same copyright registrations. The license agreements at
7 issue are different.

8 THE COURT: Okay. Mr. Prabhakar, thank you. I
9 just wanted to first ask that question.

10 Okay. And I see that you have pulled the
11 public filings from the litigations.

12 MR. PRABHAKAR: Yes, Your Honor.

13 THE COURT: Okay. And it appears that you were
14 wanting just certain things produced from those
15 litigations now; correct?

16 MR. PRABHAKAR: Correct, Your Honor.

17 THE COURT: Okay. I guess one question I have
18 for you: Does Extreme want the non-parties' material or
19 just plaintiffs' material that was produced in those
20 cases?

21 MR. PRABHAKAR: We do want non-party materials
22 as well, Your Honor, at this time.

23 And to add some color to that, why we want
24 those materials is, is that arguments about the
25 copyright registrations at issue, whether it's the

1 validity of the copyrights, whether it's the scope of
2 the copyrights, whether it's the value of the
3 copyrights, the apportionment, we would like to know
4 what other parties have said about that, in addition to
5 what the party plaintiffs themselves have said about
6 that in the prior litigations.

7 THE COURT: Okay. And what deposition
8 transcripts are you seeking? Are these 30(b)(6) on
9 parties?

10 MR. PRABHAKAR: So, Your Honor, for plaintiffs,
11 in this case, we want all the deposition transcripts
12 because it's likely that a lot of -- or most of the
13 plaintiffs' employees who were deposed in the prior
14 litigation would likely get deposed through this
15 litigation as well. There may be some plaintiffs'
16 employee who may no longer be available. Their
17 transcripts would also be helpful because we can no
18 longer depose them.

19 So, for plaintiffs, we're certainly looking for
20 all fact witness testimony and also expert deposition
21 transcripts because it's likely that some of the experts
22 in those cases would be experts in this case, and we
23 wanted to make sure that we get to take a look at their
24 opinions in prior cases and test them for consistency
25 and the arguments that they have made previously.

1 THE COURT: Okay. So, that's one group.
2 That's plaintiffs.

3 MR. PRABHAKAR: Yes.

4 THE COURT: Anything else?

5 MR. PRABHAKAR: Your Honor, given that we have
6 very little visibility into what non-parties have
7 produced in this case, at this stage, if I may, we would
8 like to see all those materials. But we're willing to
9 be reasonable in terms of burden. If there are certain
10 transcripts that are more problematic than the others,
11 we're certainly willing to be -- you know, consider that
12 on a case-by-case basis.

13 But, right now, based on the public filings, we
14 have very little visibility into what the expert said or
15 what was the topic, and, as we noted, we did not receive
16 a list of documents from plaintiffs. Although they
17 offered when we had a phone call with Ms. Arnold that
18 they would provide that to us, we didn't receive that.
19 We haven't received it to date.

20 So, in absence of that, it's hard for me to say
21 that this is something that we're willing to give up.
22 But certainly if burden and expediency, in terms of
23 getting these things expedited, is an issue, we're
24 willing to look at it on a case-by-case basis.

25 THE COURT: And you say that in terms of other

1 materials besides plaintiffs, you would be willing to be
2 reasonable, but what -- what specifically are you -- are
3 you wanting to see?

4 MR. PRABHAKAR: At this point in time, Your
5 Honor, our requests are fairly specific. So, for
6 example, we're looking for deposition transcripts from
7 the other side's witnesses.

8 Now, if plaintiffs represent that, look, this
9 witness talked about something which had nothing to do
10 with the copyrights, nothing to do with the technology
11 in this case and it has a bunch of irrelevant
12 information to this litigation, certainly we wouldn't
13 want to -- to waste either the plaintiffs' time or the
14 Court's time asking for those documents.

15 THE COURT: Okay. Is there anything else you
16 wish to add to this before I talk to plaintiffs? I have
17 some more questions for them.

18 MR. PRABHAKAR: Sure, Your Honor. I would like
19 to note the written discovery responses, although
20 plaintiffs have indicated that they don't have them
21 anymore, we want to see if we can get them from the
22 third parties or if plaintiffs can request them from the
23 third parties and produce that stuff.

24 THE COURT: That's one of the questions that I
25 have for them, yes.

1 MR. PRABHAKAR: Sure, Your Honor.

2 THE COURT: Anything else?

3 MR. PRABHAKAR: Nothing more, Your Honor. I'm
4 happy to concede the podium to my opposing counsel.

5 THE COURT: Okay. Thank you.

6 So, Mr. Wood, that was one of the questions I
7 had for you. In terms of the discovery responses, I
8 noted that you said you did not have them and I wanted
9 to better understand that.

10 MR. WOOD: So, when we finished those cases, we
11 were -- we had to -- we got rid of most of the
12 materials. I went back and -- in preparation for this
13 filing, I went back and looked to see what I could find
14 that we had in our possession, and I did not find the
15 written discovery responses. So, we weren't -- the case
16 was over. It was completely resolved.

17 We do have transcripts. We do have expert
18 reports. We do have, I believe, all the under-seal
19 filings. And, so, that's -- when I made the list of how
20 many -- so, I wanted to give some idea of burden. So,
21 here are all the documents we have to go through, but
22 I -- and if Your Honor orders us to produce those,
23 I'll -- I'll look again and see what I can find, but I
24 have not been able to locate those.

25 THE COURT: Is that just part of your normal

1 file management that you would have certain things from
2 the litigation and not others?

3 MR. WOOD: We -- we got rid of most of the
4 stuff we had from the litigation, and it just happened
5 that the transcripts, the filings were all in our online
6 file management system. But I'm not seeing the
7 written -- written discovery responses. That doesn't
8 mean -- we may be able to find them, but I'm -- I
9 have -- I mean, I looked pretty thoroughly, and we
10 haven't found them yet. So --

11 THE COURT: Okay. But the -- but what you do
12 have is filed electronically?

13 MR. WOOD: Yes.

14 THE COURT: Okay. And I wanted to just
15 understand a little bit better your position because
16 it's couched in terms of proportionality, but it seemed
17 more like a relevancy argument as you had referenced a
18 question of how Avaya/Nortel's financial information
19 would be relevant. So, I wanted to better understand
20 your position.

21 MR. WOOD: Yes, Your Honor. If I could, I
22 think there is two -- two main issues here. One, all
23 the production of those documents were all governed by
24 protective orders in those cases. And it's our
25 understanding that any dispute regarding the production

1 of those documents needs to be resolved by the Court in
2 Delaware. And, so, we don't even believe this is
3 properly heard here. They can obviously disagree.

4 And I would note that the protective order that
5 Extreme presented is not the correct protective order,
6 and we've -- so, there is a -- in bankruptcy court,
7 there is a main docket, and then the SNMP Research case
8 was an adversary proceeding that has its own docket and
9 its own protective order. And we've -- we've submitted
10 that protective order. The two protective orders are
11 Exhibit C and D to my declaration, but I think that may
12 be why there is a little bit of discrepancy between what
13 the protective order requires. So -- and I have copies
14 of them here if Your Honor doesn't have them, but they
15 were in our -- they were in our submission. And I'll be
16 glad to talk through those specific provisions.

17 THE COURT: I can -- I can pull those up.

18 MR. WOOD: Okay. And the protective orders are
19 very -- very similar. So, it's on the Exhibit C
20 submitted with my declaration, and it starts on page 21
21 of that. It's section E. So that would be section E.
22 And this is for the -- this is for Avaya, and there is a
23 very similar provision in the Nortel agreement.

24 THE COURT: Just give me one second. I have
25 Exhibit C pulled up.

1 MR. WOOD: You do? Okay. So, if you go to
2 page 21 of that document, and it starts in section E, at
3 the -- at the bottom of the page, I point out there is
4 also a very similar provision as to the protective order
5 in this case. It says, "This Court retains jurisdiction
6 over any documents produced under the protective order
7 in this case."

8 So, if you see it says, "United States District
9 Court for the District of Delaware is responsible for
10 the interpretation and enforcement of this protective
11 order. After termination of litigations, the provisions
12 of this protective order shall continue to be binding,
13 except with respect to those documents and information
14 that become a matter of public record. This Court
15 retains and shall have continuing jurisdiction over the
16 parties and recipients of the protected information for
17 enforcement of the provision of this protective order
18 following termination of the litigations. All disputes
19 concerning protected information produced under the
20 protection of this protective order shall be resolved by
21 the United States District Court for the District of
22 Delaware."

23 And, to us, this seems to be a dispute about
24 the production of information under this protective
25 order, and since Extreme has raised it as a dispute,

1 it's right- -- it should be rightly before the
2 district -- district court for the District of Delaware.

3 THE COURT: But as to plaintiffs' material,
4 this order doesn't restrict plaintiff from producing its
5 own material.

6 MR. WOOD: Correct, Your Honor. And maybe it
7 would help if I explained a little bit about the -- the
8 materials at issue just in general, or we can finish
9 with this.

10 Exhibit D, which is the Nortel protective
11 order, has a very similar provision on page 36.

12 THE COURT: But are you saying -- I just want
13 to understand your position. Do you -- are you saying
14 that this order would prevent SNMP from producing its
15 own witness, depositions and such?

16 MR. WOOD: To the extent that the other
17 side -- yeah, to the extent the other -- those
18 depositions or materials reference the other side's
19 protective materials. So, often what happens in a
20 dep -- what happens in a deposition is: A witness,
21 especially the expert witnesses that are percipient
22 witnesses, too, are questioned about confidential
23 information from the other side. And then the other
24 side requests that the deposition or that part of the
25 deposition be marked confidential.

1 THE COURT: Uh-huh.

2 MR. WOOD: So that's what it would restrict us
3 from doing. So, no, it would not restrict us from
4 producing anything that is our own confidential
5 information. That would be -- this -- this order
6 doesn't do it.

7 Our problem -- our problem is: There are a lot
8 of parties and there was a lot of confidential
9 information. So in the -- and just briefly, what
10 happened in the -- in the Nortel case was: Nortel went
11 bankrupt, and it was a huge SNMP customer. I think
12 almost every Nortel product are SNMP Research software.
13 And it was licensed, but Nortel began selling off parts
14 of its business and just began transferring SNMP
15 Research software to other companies without -- in many
16 cases, without SNMP Research's permission.

17 So, SNMP Research was trying to get a handle on
18 this because its software was going everywhere and it
19 didn't want to lose control of its software. And, so,
20 it's contacting the parties. Some parties worked with
21 SNMP. Some, like Avaya, did not and said, we're -- we
22 got it. We're not going to -- we're not going to
23 cooperate with you. And, so, SNMP had no choice,
24 really, but to file litigation in order to protect its
25 intellectual property. But in the course of that, you

1 had all these different parties that had gotten the
2 software, and so they're -- at different times, they're
3 appearing in the litigation.

4 Nortel is also a very complex entity and had
5 many, many entities, and Nortel Canada -- Nortel Canada
6 and Nortel U.S. were the two most significant entities.
7 This case that they're referring to is against Nortel
8 U.S. Nortel Canada's a completely separate entity.
9 They produced source code in this case. They marked it
10 source code. The witnesses talk about that source code.
11 We have experts that write reports on that source code.
12 But it's Nortel -- it was Nortel Canada's highly
13 confidential source code materials.

14 And, so, we don't think we can just expose
15 that, you know, or even the witnesses talking about that
16 when another party has said that's confidential under
17 this protective order in this case.

18 And, so, that's -- that's our issue. And
19 that's what causes some of the burden is that we would
20 have to go through all of these materials and determine
21 who's asserting confidentiality over what, who produced
22 what. And I -- I was involved. I certainly don't
23 remember exactly what happened. I just know there were
24 a lot of parties and there was source code involved, and
25 we had a -- we had a lot of depositions and we had a lot

1 of experts. It was a -- it was a complicated case. And
2 there were, like I said, a lot of different moving
3 parts. So, that's our -- that's why there is a burden.

4 Now, the other -- so, in considering
5 proportionality, we think our burden is high. And we
6 offered to resolve this and not have this become an
7 issue, and we think we have to go before the district
8 court in Delaware. We offered to try and work this out
9 if Extreme would agree to negotiate on the materials it
10 actually gets.

11 And that's when we offered to provide a list on
12 a call with Ms. Arnold, and on that call, Extreme
13 rejected that offer and said, "We want everything that
14 you have. There is really no negotiation, and you
15 either give us all of it or" -- they're really saying
16 all or nothing. And we think all of it, there is stuff
17 that isn't relevant, and the burden for going through
18 all of it is pretty high.

19 So, the fact that they didn't take our offer,
20 we're now here. But we think this is actually the wrong
21 venue for -- you know, the wrong court for this action
22 because of the protective orders in these other two
23 cases.

24 THE COURT: So, you referred to -- you offered
25 to prepare a list, but it also sounded like you may have

1 already prepared one; is -- have you prepared a list of
2 everything?

3 MR. WOOD: I've not prepared a list. I've
4 looked at the total number of documents. We haven't
5 prepared a list with the description of what each one
6 is. We haven't gone to that trouble. But that -- that
7 was our offer before.

8 THE COURT: Uh-huh.

9 MR. WOOD: Extreme said, "No, we want to go to
10 court. We want everything." And I said, well, then, we
11 don't -- one, we don't think this is the proper court,
12 and we brought that up with them before, that
13 they're -- these documents are governed by protective
14 orders in another case. And in their argument -- I
15 mean, they're trying to argue that that's, I guess, not
16 correct. But, at least in the Nortel case, I think they
17 have the wrong protective order.

18 THE COURT: Okay. And then briefly describe to
19 me what the process is, what you feel it is under these
20 protective orders if you have something on a list and
21 Extreme says, "I need this deposition."

22 MR. WOOD: So, I think we -- we have to give
23 notice to the party, and they have an opportunity to
24 object, the producing party does, whoever that may --
25 whoever that may be, they would have an opportunity to

1 object.

2 And, so, our offer was: We would -- and this
3 was a couple of months ago since we knew it would take a
4 while. If we could narrow down the list of materials,
5 we would -- we would go ahead and start that process and
6 try and work through it. But they weren't -- they
7 weren't interested in that process, and, so, here we
8 are.

9 THE COURT: Okay. Thank you.

10 MR. WOOD: Okay. Mr. Prabhakar.

11 MR. PRABHAKAR: Your Honor, a couple of things
12 that I want to respond to, and, first of all, to the
13 extent that we have the wrong protective order, I
14 apologize. We weren't trying to mislead the Court with
15 anything.

16 But I can tell you two things. I wrote to
17 plaintiffs -- or Extreme wrote to plaintiffs in mid
18 August asking two questions; have you given notice to
19 the parties whose materials have been requested? Second
20 question asked is: Are you willing to produce the
21 protective orders so that we can assess?

22 We met and conferred on this at least three
23 times, and each time I asked plaintiffs' counsel that,
24 "Will you provide us the protective order so that we can
25 assess your position?" Because plaintiffs' original

1 position was we need to reach an agreement with the
2 other side on the specific materials requested.

3 So, to the extent that we have the wrong
4 protective order and we didn't get the right protective
5 order until this motion was filed, it's not because of
6 our lack of trying.

7 Now, let's parse, if I may, Your Honor, the
8 protective order very briefly. So, the first thing is:
9 This protective order, which plaintiffs are relying on
10 and which for the purposes, as they have said, the Avaya
11 protective order and the Nortel protective order are the
12 same, it says, the moment the request is -- for
13 protected material is requested in discovery, notice
14 shall be given immediately. It shall be promptly given
15 by overnight delivery, fax or e-mail within three
16 business days of such demand to the producing party.

17 Your Honor, this is not the first time these
18 materials have been requested in this case. You may
19 remember back in December of 2022, Brocade and Broadcom
20 had requested these materials. But they're no longer in
21 the case, so I'm not going to speak for them. We
22 requested this material way back in March. So, almost
23 coming up to a year. There is still no notice;
24 although, this PO requires notice within three days.
25 So, we don't understand if plaintiffs are relying on

1 this PO why the notice has not gone out.

2 And I want to briefly address the notice issue
3 also, Your Honor, because the burden that plaintiffs are
4 citing, in terms of providing notice, it's not that
5 plaintiffs haven't reached out to Nortel's counsel.
6 Plaintiffs actually contacted Nortel's counsel for
7 permission to produce the settlement agreement that they
8 had with Nortel, in which they got a bunch of money from
9 Nortel, to be produced in this case. Nortel's counsel
10 said, no problem; produce it.

11 So when they wanted a document that's helpful
12 to them produced in this case, they had no problem
13 reaching out to Nortel's counsel. They haven't in this
14 case because these are documents that they don't want
15 produced.

16 Now, let's look at the issue about Delaware
17 courts having jurisdiction. The Court is responsible
18 for the interpretation and enforcement of this
19 agreement. There is no enforcement of this PO. We're
20 not trying to enforce the PO in this litigation. In
21 fact, the position plaintiffs are taking is setting a
22 precedent that no district court in the United States
23 can order production of materials from another fellow
24 district court in the United States unless the parties
25 go to the original court and sort out the meaning of the

1 protective order.

2 But I don't understand what's the dispute about
3 the interpretation of the protective order that this
4 Court isn't competent enough to resolve. These are
5 already similar protective orders. There is no dispute
6 about the notice. The timing is clear. The party to
7 whom the notice has to be given, that's clear. So,
8 there is really no dispute about the interpretation of
9 the protective order.

10 Now, I want to point out one more thing. The
11 burden of opposing the enforcement of the demand shall
12 fall solely upon the producing party. The producing
13 party in this case, Your Honor, would be Avaya, would be
14 Nortel.

15 Plaintiffs' articulation of burden at this
16 point is hypothetical. They haven't contacted Nortel
17 for these materials; although, they contacted for the
18 settlement agreement. They have not contacted Avaya for
19 the production of these materials. For all we know, had
20 plaintiffs done that a year ago, asked for the
21 protective order governing this litigation and the
22 Nortel litigation, we would have had their position by
23 now, and then we would be assessing burden not in a
24 hypothetical but in reality.

25 Right now, the entire statement of burden which

1 plaintiffs for the first time in detail provided in
2 Mr. Wood's declaration, which we didn't see an hour
3 before or maybe a couple of hours before the filing of
4 our joint statement; although, the Court had ordered
5 parties to exchange their positions.

6 So, the articulation of burden that plaintiffs
7 have in this case is entirely hypothetical, and it would
8 have benefited this Court, once the dispute was in front
9 of it, that plaintiffs would have helped the Court help
10 defendants obtain clarity.

11 I want to quickly also address the point about
12 Extreme not willing to compromise. So, if I remember
13 the meet and confer, or, actually, the call that
14 Ms. Arnold -- correct me because it's been several
15 months -- that was the first time we got an offer to
16 produce a list of documents. But that was only an offer
17 to provide a list of documents. There was virtually no
18 commitment from plaintiffs that they would actually
19 produce documents from that list that we would request.

20 So, it's not like Extreme was being
21 unreasonable, that we want everything; although, in
22 the -- in the abstract, not seeing the list,
23 everything -- and, you know, this is consistent with
24 every side. Every side thinks that whatever they are
25 requesting is relevant; therefore, without seeing in the

1 concrete, it's difficult to give up. And we were not
2 doing anything inconsistent with that that in the
3 abstract we can't give up rights to any relevant
4 materials.

5 Now, plaintiffs' counsel mentioned facts about
6 a confidential sourcebook of Nortel. This would be one
7 example of materials that we do not want. We have no
8 interest in what could Nortel have had besides the SNMP
9 Research software. We're not interested in that. It's
10 likely not relevant to our case, so we don't want that.

11 To the extent the source code is an issue, I
12 can tell you we don't want production of source code.
13 And I don't think any of our requests call for
14 production of that source code. Arguably, we may not
15 even want their expert's report on how Nortel's source
16 code infringes their copyright.

17 To the extent that there is a dispute that how
18 the copyright infringement read works on Nortel, Avaya
19 versus Extreme, that may be relevant. But, Your Honor,
20 if that source code is an issue that's preventing the
21 production of everything else, Extreme is willing to be
22 reasonable. We certainly don't want any source code
23 from Nortel, from Avaya. We don't want it.

24 The issue becomes do we want expert reports
25 related to Nortel's source code. Perhaps. But, again,

1 we're willing to be reasonable if that becomes an issue
2 with production.

3 So, we are willing to take a position
4 that -- and I want to quickly add one more thing to the
5 source code so that I'm clear that we're not giving up
6 too much.

7 If there are expert reports that address the
8 source code in the abstract, or, for example, contain a
9 snippet of Nortel's source code which doesn't give us
10 any insight into what Nortel was generally doing, I
11 think that shouldn't be a problem either for Nortel or
12 for plaintiffs to produce to us because, really, there
13 is nothing that we can glean from an out-of-context
14 source code in an expert report. Likewise, if there is
15 a stray mention to source code or a few files of source
16 code, we're certainly not -- you know, that's certainly
17 not going to cause competitive harm to Nortel.

18 And, finally, if there is quantifiable data in
19 the sense that Nortel's total source code was a million
20 lines, plaintiffs' source code was 20,000 lines, for
21 example, that doesn't reveal anything about the
22 substance of Nortel's source code, and that's also the
23 kind of report that we wouldn't want to give up.

24 But I -- I can confirm with you, Your Honor,
25 that the source code itself is not something that we are

1 requesting, and if that helps unlock this issue, then
2 we're happy to -- happy to -- you know, concede on that
3 because we can totally see that that may not be relevant
4 to our case.

5 Very briefly I want to address the question
6 about written discovery responses. I know Mr. Wood. I
7 take his word he doesn't have it. But these cases were
8 filed in Delaware. And just like here, you need local
9 counsel in Delaware to -- to present your case in front
10 of the Court. I would request that if Mr. Wood cannot
11 find the discovery responses in his e-mails or his
12 colleagues' files, he may please request his local
13 counsel in Delaware for those documents.

14 And I'm a hundred percent with Mr. Wood that a
15 bankruptcy court's docket is really, really hard to
16 navigate. I probably spent a day-and-a-half trying to
17 just download the docket entries. But they have it.
18 They were in that case. They could have made our life
19 so much easier. It took me one-and-a-half days to find
20 what turns out to be the wrong protective order. It
21 would have taken Mr. Wood five minutes to send me that
22 protective order and we would have figured out whether
23 there is a dispute or not.

24 So, Your Honor, to summarize my argument, first
25 of all, the PO only requires notice, requires prompt

1 notice, which has not been given.

2 The objection to production has to come from
3 the producing party, which is Avaya or Nortel. And
4 there is no dispute that we can see so far about the
5 interpretation of this order.

6 We have -- plaintiffs want us to go to
7 Delaware. We are not a party to this case. I don't
8 even know what standing we would have to file a dispute
9 in Delaware. And courts in the United States order
10 production of confidential material from other
11 jurisdictions all the time because there is a protective
12 order in this case that affords the highest level of
13 protection.

14 If plaintiffs want, we're willing to agree that
15 every single document produced in prior litigations can
16 be produced attorneys' eyes only and Extreme's
17 witnesses, Extreme's in-house counsel would have no
18 access to that material whatsoever. Although, it's
19 interesting because part of the Avaya business which was
20 at issue in that litigation is now part of Extreme, and
21 plaintiffs' counsel have asked two Extreme 30(b)(6)
22 deponents questions about Avaya products, about Nortel
23 products.

24 The Nortel/Avaya contracts are listed,
25 identified by Bates number in plaintiffs' interrogatory

1 response about damages. That's just to reemphasize the
2 point about the relevance and importance of these
3 documents.

4 Thank you, Your Honor. I said more than I said
5 I would, but I just wanted to bring up these points.

6 THE COURT: Thank you. All right. Mr. Wood.

7 MR. WOOD: Thank you.

8 THE COURT: Does the concession on the source
9 code help, in his words, unlock the issue any?

10 MR. WOOD: Well, I will say that's the first
11 that we've heard of that concession after months and
12 months of discussing this and having a call. I think
13 that that could help. In the way it was framed, it
14 could actually make it more difficult; so, we don't want
15 the source code but we do want a snippet. They talk
16 about it in general but not -- so somebody has got to go
17 through and figure out what's a snippet and what's
18 general, and that's the -- I mean, that -- that's the
19 burden that we'd have is going through that and trying
20 to make that determination, and I don't know that
21 they're going to agree with us. So --

22 THE COURT: What about if it's all produced
23 under attorneys' eyes only?

24 MR. WOOD: I think we still have the same
25 problem. We would be violating this protective order in

1 the -- in the Delaware court.

2 THE COURT: Well, what if you gave notice to
3 Nortel and Avaya and the request being that it's
4 produced under attorneys' eyes only?

5 MR. WOOD: So, that was our -- that was our
6 proposal before was that we make a list of all -- of
7 everything. We work together to narrow that down to
8 something reasonable, and then we would give notice and
9 see if we could get permission to produce all that. And
10 then if one of those parties does bring up a dispute,
11 then we -- and says no, then we'd have to deal with it
12 at that time.

13 What I know from --

14 THE COURT: Can I ask you a question, though.
15 In putting this list together, because that's -- and in
16 trying to understand the burden, will the list that you
17 can put together be detailed enough for -- because I
18 hear Mr. Prabhakar saying, well, we've had very little
19 visibility into what these are. Can you put a list
20 together that's sufficiently detailed where he can go
21 through and say, well, I definitely don't need that;
22 that's not relevant; this, you know, may be; this will
23 warrant discussion?

24 MR. WOOD: Maybe. If -- so, for example, we
25 have a source code expert that reviewed Nortel U.S. and

1 Nortel Canada's source code, and I think maybe even some
2 other parties' source code, but I know Nortel U.S. and
3 Nortel Canada. I remember that for sure. And, so, we
4 could say this is expert X, Y, Z; this is, in general,
5 what they did.

6 Now, if their response is, okay, we don't care
7 about source code; we don't want that expert report,
8 then that resolves that problem, and we don't have to
9 review it and figure out exactly whose source code is in
10 there and who to give notice to.

11 But if what they're going to say is, we don't
12 want any specific source code but we want all the
13 general statements, not the specific; we want the
14 snippets, not the -- then I don't -- I don't know how we
15 do what he proposed. So, if we can do it at a high
16 level, then, yes.

17 I mean, we have kind of the same issue about
18 financials. There was a lot of financial -- you know,
19 there were several financial experts in these cases.
20 They reviewed the other parties' financials. Those were
21 obviously marked confidential, highly confidential. We
22 have the same issue. We don't think their financials
23 are really that relevant to this case. I don't know if
24 those parties would be okay with Extreme seeing them or
25 not. They may not. So, that's the issue we have.

1 I did want to correct one thing. You know, it
2 was, I guess, said that we did get permission from
3 Nortel's counsel. So, Brocade hired Nortel U.S.'s
4 counsel. It's a Mr. David Harrington at Cleary
5 Gottlieb, who was the counsel for Nortel U.S., and he
6 did say you can -- we don't object to producing
7 anything. But he doesn't represent Nortel Canada. He
8 produced a significant amount of stuff. He doesn't
9 represent Genband. He doesn't represent Avaya.

10 It's interesting that Extreme acquired some of
11 Avaya's materials. They could have asked Avaya about
12 this. They're in a better position to ask Avaya than we
13 are, and they -- we haven't heard anything about that.

14 So, I don't know that it's going to be easy to
15 get permission. We want to reduce it. And I know when
16 we go ask someone for permission, like if we ask Avaya,
17 if Mr. Hamilton was their counsel, then he's the one
18 that's at issue on these privileged e-mails. And I've
19 dealt with him before and I know his first question will
20 be, tell me exactly what you're producing.

21 THE COURT: Sure.

22 MR. WOOD: And, so, that then becomes our
23 burden is: We've got to go through everything and say,
24 these are all -- this is all the Avaya confidential
25 material that you produced that Extreme now wants to

1 see, and it -- you know, it could take us a fair bit of
2 time to go through everything and figure that out.

3 THE COURT: Okay. And what about the discovery
4 responses; have you checked to see if they're held by
5 local Delaware counsel?

6 MR. WOOD: I have not. And, so, I've only
7 looked at our records. So, if -- you know, if that's
8 something Your Honor orders us to do, then we can look
9 at that.

10 And, I mean, my memory is the written discovery
11 was extensive. I think we'd have -- could have similar
12 issues there, depending on what the requests were and,
13 you know, how those were -- how those were marked,
14 especially if they're wanting our discovery issued to
15 other parties.

16 THE COURT: Uh-huh.

17 MR. WOOD: I don't know. I just -- I'd have to
18 look at them and see what -- see what they are. So I
19 could make a call, but I know that there was a lot of
20 written discovery in the case.

21 THE COURT: Okay.

22 MR. WOOD: So --

23 THE COURT: All right. Well, it sounds like to
24 get a handle on this, we need to understand what the
25 scope of the universe is, and, so, we're going to need

1 to have the list.

2 So, Mr. Wood, I am going to ask the plaintiffs
3 to put that list together of what -- and as detailed as
4 you can be as to what's included and then allow Extreme
5 time to look at that and -- within the categories that
6 they have requested and to see what they feel they may
7 want so that then the appropriate process of making the
8 call and seeking approvals and can better describe
9 what's being requested to the disclosing parties so all
10 of that can occur because I feel like here today,
11 it's -- it is difficult to assess the full burden
12 without knowing the scope of the universe we're dealing
13 with. So, we've got to get started somewhere.

14 MR. WOOD: Okay.

15 THE COURT: So, the list will be the starting
16 point. And, Mr. Prabhakar, if you can look at that, try
17 to narrow what you need within -- what you think you
18 need based on the descriptions, try to eliminate things,
19 if you can, and then maybe be more specific. If it
20 starts getting into the source codes, because I
21 understand their position, that is going to be
22 difficult. Well, if it was spoken about in general
23 terms versus a specific code, you may or may not want it
24 because he will have to describe that to the disclosing
25 party exactly what's -- what has been requested, and

1 then maybe there can be the discussions of a higher
2 level of protection, if they would be willing to do
3 that, to eliminate some of the work that may entail
4 going through everything. We don't know. And, so, we
5 need know what we're dealing with first.

6 And, Mr. Wood, I will ask if you could check
7 your files just one more time and also make a call to
8 your local counsel just to see if they might have it
9 readily available. That wouldn't cause an
10 additional -- any additional burden in checking --

11 MR. WOOD: Okay.

12 THE COURT: -- to make a phone call.

13 MR. WOOD: All right.

14 THE COURT: All right.

15 MR. PRABHAKAR: Your Honor, briefly. I'm not
16 going to make an argument, but I'm going to make a few
17 requests to this. Can the plaintiffs at least give
18 notice that their materials have been requested and just
19 attach our discovery requests so that the other side
20 is in -- at a very high level knows what is requested?
21 And if they say yes, then we don't even have to go
22 through the exercise of cataloging everything.

23 And the second thing is: We would really like
24 to get to the depositions of plaintiffs' employees. So,
25 if Your Honor could give them a slightly expedited

1 schedule to put together that list, given that this
2 request has now been pending for over a year, we would
3 very much appreciate it.

4 THE COURT: Well, they're a party to the order.
5 So, I'm going to leave it to their discretion whether
6 they feel like they immediately need to put them on
7 notice. I'm asking them to put the list together
8 because I'm trying to find the scope that's relevant in
9 this case. So, I'm not going to order them to do that
10 and I'm going to leave that to them. They have whatever
11 they feel their obligations are under the order.

12 In terms of plaintiffs' employee depositions,
13 if that is less problematic, if you can separate that
14 from the list of other things and that's -- and that's
15 easier, that would at least get things started. Can you
16 do that?

17 MR. WOOD: So, we -- we'll put together the
18 full list. Even on the employee depositions, I'm not
19 sure if they're talking about confidential information
20 from other parties. We'd have to go through the entire
21 deposition. So, I think -- well, I think we start with
22 the list, as Your Honor has asked. Could -- I would
23 request, could we have two weeks to put the list
24 together?

25 THE COURT: I think -- I think that's

1 reasonable given the amount of material that's been
2 described to me.

3 MR. WOOD: Okay. Thank you, Your Honor.

4 THE COURT: Okay. Now, the second topic -- we
5 can move to that -- is Extreme's request for documents
6 about SNMP's licensing negotiations with specific
7 parties, and this pertains to RFP No. 57, and I see that
8 plaintiffs have produced license negotiations with 28
9 licensees and negotiations, specific negotiations, with
10 five. Is that correct?

11 MR. PRABHAKAR: That is correct, Your Honor.

12 THE COURT: Okay. All right.

13 MR. PRABHAKAR: And, actually, with those five,
14 the ask for 28 actually goes down to 26.

15 THE COURT: Okay. Okay. And, Mr. -- whenever
16 you're ready, Mr. Prabhakar. I mean, my first question,
17 I want to understand specifically what type of
18 information is Extreme looking for in these licensing
19 negotiations.

20 MR. PRABHAKAR: So, Your Honor, the type of
21 information that we're looking for is whether there was
22 any negotiation about what the terms of the license
23 means; if there were technical terms at issue, do they
24 inform the scope of the license and do they bear on the
25 facts that are relevant in this case; were there

1 negotiations about the royalty rates, because it's
2 likely -- a lot of these licenses have been listed in
3 plaintiffs' interrogatory responses as relevant to
4 damages. So, to the extent that the parties bargained
5 about royalty rates, we would like to know where
6 plaintiff started from, where they ended up. At a very
7 high level, these are the kinds of information.

8 Another piece of information that's highly
9 relevant to our case is whether there were requests for
10 the addition of other products, whether there was a
11 request for assignment of the license to another party,
12 and what were plaintiffs' demands in those situations
13 because we have a similar pattern here where -- or fact
14 pattern here where we had requested transfer of a
15 license, or Brocade had requested transfer of a license.
16 And, so, we would like to know that, what has been
17 plaintiffs' practice in that regard in the past and
18 whether there is relevant information that we can use in
19 our claims and defenses in this case. So that's at a
20 very high level what we're asking for, Your Honor.

21 THE COURT: In the five that they have
22 produced, did you find all this information?

23 MR. PRABHAKAR: Some of it, Your Honor; not all
24 of it. And we haven't gone through it cover to cover.
25 But, yes, certainly some of the negotiations about

1 amending the license, adding products, some of it is
2 there. But we haven't seen all of it. But we only have
3 five, out of which three are now related to entities
4 like Extreme.

5 So, for example, we have Brocade's. We have
6 Enterasys' license. And that's actually quite telling
7 because Enterasys' license transferred to Extreme. And
8 it was a fairly smooth process. It happened long after
9 the acquisition closed. So that's kind of telling and
10 important for this case. Except to the extent that
11 there are others, that's certainly going to be relevant.

12 The challenge, Your Honor, is -- is the issue
13 that we are worried about, which is selective disclosure
14 of negotiations. So, for example, they have produced
15 negotiations with Cisco which had a high dollar
16 settlement with plaintiffs. So, the concern, really,
17 here is that are plaintiffs picking and choosing
18 negotiations that are helpful to them and potentially
19 withholding negotiations that are not helpful to them?
20 So, selective disclosure is one of the problems that we
21 have.

22 So, in addition to the relevant information
23 we've required, we're worried that we're only getting
24 information that plaintiffs are asking for, not the
25 requests -- not the information that Extreme is

1 requesting.

2 THE COURT: Okay. Thank you.

3 All right. Mr. Wood, if I could start by
4 asking you: How did you decide to produce the five that
5 you did?

6 MR. WOOD: Yes, Your Honor. So, for -- let's
7 start with Cisco. We produced the Cisco negotiations
8 because they specifically asked for the Cisco
9 negotiations.

10 In request No. 56 -- here it is -- you see it's
11 all documents and communications related to the master
12 software license agreement dated June 23rd, 2008,
13 between Cisco and SNMP Research International, including
14 any exhibits, those related to negotiations that led to
15 this agreement, claims and assertions by you.

16 So, we didn't just pick this out of the list;
17 they asked for it.

18 THE COURT: Okay.

19 MR. WOOD: The parties have also asked for all
20 documents and communications with Brocade, Extreme and
21 Enterasys, which are parties related to -- I mean,
22 Brocade was in the litigation. The transfer of their
23 license to Extreme is at issue. So that seemed
24 relevant. There was a specific request for that.

25 Extreme obviously wanted all of the -- all of

1 the documents we had related to the Extreme license
2 agreement. So we produced that. The Enterasys license
3 was transferred to Extreme. So that's something they're
4 in possession of. So, these were things they
5 specifically asked for specifically at issue in this
6 case.

7 The problem with RFP No. 57, and if you -- it's
8 just a list. And we have asked Extreme, "How did you
9 come up with this list?" And they -- all we have
10 gotten, and this is all that's in their paper, is that
11 these are similarly-situated entities. That's the
12 extent.

13 Well, we've produced all of our license
14 agreements. So, if there is something in the license
15 agreement, they should be able to show for each of these
16 entities, they have a license agreement with us, with
17 SNMP, and be able to show by the terms of the license
18 agreement that they're similarly situated. They haven't
19 done that. They haven't even attempted to do that.

20 All -- it's a very conclusory argument. They
21 just say, "We" -- "We have determined they're similarly
22 situated. We're not going to tell you how." And I
23 think if you look at the case they cited, the *High Point*
24 *SARL* case, it -- for the proposition that you produce
25 license negotiations with similarly-situated entities.

1 Well, in that case, one, they had to show that
2 they were similarly situated. I don't think Extreme has
3 done that here. But it's -- it's informative that what
4 the Court determined was -- in that case, I think *High*
5 *Point SARL*, it was a patent infringement lawsuit, and
6 the issue was should you produce all of your licensing
7 negotiations with other patent infringers. And the
8 Court ruled, well, those are obviously similarly
9 situated because that's exactly what's happening here.
10 You know, you're claiming someone has infringed; we want
11 to know how you negotiated with our infringers.

12 And, so, the only party in this list, according
13 to the -- that analysis that's similarly situated is
14 Cisco. And we produced -- it's also -- you know, I
15 appreciate counsel saying that he -- they could -- Cisco
16 could come off the list on 57.

17 So, what we produced are the negotiations for
18 this specific license agreement, the June 23rd, 2008,
19 license agreement, which was the license agreement SNMP
20 entered into with Cisco in order to resolve their
21 infringement. And that's why it was such a high-dollar
22 license agreement because Cisco had been a customer for
23 years.

24 We haven't produced all the negotiations with
25 Cisco previously. Cisco had licensed lots of stuff.

1 There is -- and Extreme has that license. They have the
2 previous license agreement. All they asked for was the
3 one that dealt with the infringement and resolving the
4 infringement.

5 THE COURT: Okay.

6 MR. WOOD: And, so --

7 THE COURT: So, none of these on this list are
8 infringers?

9 MR. WOOD: Not that we know of at this time,
10 correct. So, we have -- we do not -- we have had no
11 negotiations with any of these -- these parties other
12 than -- I guess I should say: Radware was one of the
13 parties that got software from Nortel. They were not
14 previously an SNMP Research customer. And there was a
15 settlement agreement. So, Radware did enter into an
16 agreement with SNMP Research to license the software.
17 It's a -- it's a zero-dollar license agreement.

18 So -- and then I don't know if their intent in
19 listing Avaya Holdings Corp. as a -- which is not the
20 Avaya that we had the lawsuit with -- was -- was the
21 same thing.

22 Since we're going through these, Sienna and
23 Ericsson were also recipients of Nortel software.

24 THE COURT: What were those two?

25 MR. WOOD: Sienna and Ericsson. But those

1 were -- those -- those were resolved.

2 But I would say, you know, Extreme
3 hasn't -- I'm making their case for them, I think;
4 right? They haven't put any effort into trying to show
5 that any of these entities are similarly situated. They
6 have the Sienna agreement. They have the Ericsson
7 agreement. They can say these are -- these are similar
8 or not. And they haven't even attempted to do any of
9 that or have discussions with us about why some of these
10 are and some of them aren't.

11 THE COURT: Okay. Thank you.

12 MR. WOOD: Thank you.

13 THE COURT: I bet you know what I'm going to
14 ask.

15 MR. PRABHAKAR: I'm not going to guess, Your
16 Honor.

17 THE COURT: Can you -- after reviewing the
18 agreements, can you talk with me about similar
19 situations that you're trying --

20 MR. PRABHAKAR: Sure, Your Honor.

21 THE COURT: -- to identify.

22 MR. PRABHAKAR: So, I think the -- just to
23 briefly address the *High Point* case, it talks about
24 parties that are similarly situated, which doesn't
25 necessarily mean infringer versus non-infringer.

1 So, for example, every party that we have
2 requested negotiations from are providers of network
3 equipment like Extreme. And, actually, before I even
4 walk down that list, I'll tell Your Honor our concern in
5 providing a really fulsome explanation of how each and
6 every entity got on that list because, as you know,
7 there are 700 different parties that have agreements
8 with plaintiffs and we requested only 28. So, in some
9 sense, the selection of the list itself reveals work
10 product information. So, if we dive into more details
11 about how each specific entity got on that list, that's
12 actually going to attorney mental impressions of how we
13 got there.

14 But I take the Court's concern about you want
15 to know a little bit more how, and I'm happy to provide
16 that information of a very high level.

17 So, I said, first of all, all of them are
18 network equipment providers. Many of them in the list
19 are direct competitors of Extreme; Juniper, Cisco, HP,
20 Sienna, ExGen. And you just heard --

21 THE COURT: How many -- how many are direct
22 competitors out of this list?

23 MR. PRABHAKAR: So, Your Honor, I would have to
24 confirm with our client, like, how they viewed direct
25 competitors. But I know for certain that Juniper,

1 Cisco, HP, and Sienna are direct competitors. And Avaya
2 Holding. At one point in time -- we bought the
3 networking business from Avaya, but at one point in
4 time, Avaya and Brocade were competitors of Extreme.
5 And these are licenses negotiated prior to the
6 acquisition. So, a lot of them, at least from a direct
7 competition point of view, are related to Extreme. And
8 Broadcom and Avaya were actually accused of
9 infringement.

10 We have, I understand, Broadcom's negotiations,
11 but Avaya Holding Corp. had a later license, but it also
12 got equipment from Nortel which, in the past, was a
13 competitor of Extreme.

14 Radware, as we understand -- and, Your Honor,
15 this is where my limits of my knowledge about my
16 client's business may be showing. But, really, given
17 the span of this case, a lot of these entities may
18 either be past or present competitors of Extreme.

19 But, in general, we picked companies which were
20 in the same space, maybe the same size as Extreme and
21 had similar royalty rates as Extreme without, like,
22 going into a lot of work product information, Your
23 Honor.

24 And to -- to remind Your Honor, the bar is
25 relevance, and I think just the fact that each one of

1 these companies is a licensee of SNMP Research shows
2 that these negotiations are relevant.

3 And we have narrowly tailored our request. We
4 haven't asked SNMPR to produce negotiations with all 750
5 licensees. That would be ridiculous. That would be
6 overbroad and Your Honor wouldn't like it.

7 But essentially what plaintiffs are accusing us
8 of is: You put one RFP for Cisco and you produced it,
9 but you put 26 names here, or 28 names here, so we
10 aren't going to produce it. I could break these up into
11 28 requests. And that's the selective disclosure
12 problem, Your Honor.

13 We requested Cisco. You gave it to us because
14 potentially it looked good for you. We have used your
15 burden of responding by collecting 28 and putting it in
16 one request and you ignored it.

17 Would it be different -- would it be a lot
18 different if you just would have served 28 requests or
19 26 requests or 28 requests directed to each entity?
20 It's form over substance, and that's the selective
21 disclosure that I'm talking about, Your Honor.

22 THE COURT: Okay. All right. So he's
23 explained they picked companies, perhaps, of the same
24 size and similar royalty rates, and he's given some
25 examples of the type of information we're looking at

1 from the licensing negotiations. So why would that be
2 problematic?

3 MR. WOOD: So, I'm -- one, I -- we don't think
4 all of that is correct. I actually -- my -- Dr. Case,
5 our client, has now joined the hearing, and there is two
6 of these entities he's never even heard of, and it
7 doesn't appear SNMP even has a license agreement with
8 them. So, it's really not clear to us how they came up
9 with this list.

10 THE COURT: I thought -- I just want to make
11 sure I'm understanding something. I thought you said
12 you gave them all of these license agreements.

13 MR. WOOD: We gave them all of our license
14 agreements.

15 THE COURT: Now you're saying you're
16 not -- okay. You gave them all of your licensing
17 agreements. You're not sure if all of these companies
18 are licensees?

19 MR. WOOD: Right, because they won't tell us
20 how they came up with the list. So, Mr. Prabhakar has
21 said more in this hearing than he has on multiple meet
22 and confers. Every time this comes up, we say, "How did
23 you come up with the list? What do you really want?"

24 So, the reason we produced Cisco is not -- it's
25 because they asked us a specific request, and it was

1 clear what they wanted and why it was relevant. They
2 haven't -- they haven't done any of that here. I mean,
3 for example, Verizon is a cell phone company. I'm not
4 sure how Verizon -- VMware produces a virtual machine
5 which seems completely different.

6 THE COURT: Okay. He described them as
7 providers of networking equipment.

8 MR. WOOD: I think they would have to show that
9 our license was -- I don't know that the SNMP license
10 with Verizon is for networking equipment. I'd have to
11 go look. I guess my point is: There is questions --

12 THE COURT: Let me ask this so maybe we can try
13 to cut this down a little bit: Would you be able to
14 look at this list together and pick out, say, three that
15 are networking equipment providers of a similar size,
16 similar royalty, and you say, these are like the three
17 most burdensome negotiations, and produce that?

18 MR. WOOD: For a -- you mean pick out three
19 that we've produced that we can both agree --

20 THE COURT: Uh-huh.

21 MR. WOOD: -- based on burden and --

22 THE COURT: Yes.

23 MR. WOOD: We actually offered something just
24 like that. You know, we think doing just a few makes a
25 lot of sense. We'd be happy to do that. We think some

1 of these aren't even relevant. And we couldn't even
2 engage in a discussion because Mr. Prabhakar said they
3 were worried about telling us why they put certain
4 entities on the list. But I think we have to have that
5 discussion.

6 THE COURT: That's why I'm not going to ask him
7 to go into any more detail, but using the general
8 criteria that I've been given this morning, I mean, can
9 you all do that? Look at the list --

10 MR. WOOD: Yes.

11 THE COURT: -- pick out the three that kind of
12 fit the categories that they're looking for?

13 MR. WOOD: Yes, I think we would be -- we'd be
14 happy to pick out three, and that would certainly be
15 more reasonable than doing all 28. So --

16 THE COURT: Would -- and, Mr. Prabhakar, do you
17 want to address that? Because I'm hearing now a concern
18 that they may not even be licensees of them. So, based
19 on what I have before me, this would seem like a
20 reasonable compromise for today.

21 MR. PRABHAKAR: Your Honor, I am not going to
22 annoy you by asking for more; although, every requesting
23 party asks for more. We'll put together a list of three
24 to begin with and see how it works out.

25 THE COURT: Okay.

1 MR. WOOD: Thank you, Your Honor.

2 THE COURT: All right. Does anyone need a
3 break before we move to topic 3?

4 MR. PRABHAKAR: I'm sorry, Your Honor?

5 THE COURT: I was just asking if anyone needs a
6 break before we move to topic 3.

7 MR. PRABHAKAR: I'm going to keep topic 3
8 really brief. So --

9 THE COURT: Okay. We'll go ahead with that.

10 MR. PRABHAKAR: -- unless somebody wants to --

11 THE COURT: All right. So, this is Extreme's
12 claim that SNMPR refuses to produce the competition
13 documents, RFP Nos. 156, 158 and 161. And, as I
14 understand, the plaintiffs have produced the
15 non-privileged documents responsive to this request. Is
16 that right? Is that correct?

17 MR. WOOD: Yes, Your Honor.

18 THE COURT: Okay. So, I guess a question I
19 have for you, Mr. Prabhakar: Now that they have
20 produced the non-privileged documents, I mean, what else
21 is there that you're looking for?

22 MR. PRABHAKAR: So, actually, Your Honor, I'm
23 not aware of any privileged documents being withheld
24 because I haven't seen an updated priv log since these
25 documents have been produced. But we'll take them at

1 their presentation.

2 And obviously we don't ask for privileged
3 information, but when we reviewed plaintiffs'
4 production, we found, for the timeframe that was
5 requested, very few documents that relate to
6 competitors.

7 So, at this point in time, Your Honor, the only
8 request we have for the Court is two requests: One,
9 plaintiffs' RFP response still have objections to it.
10 So that prevents us from understanding what's being
11 produced, what's not being produced.

12 Even in their brief, they had informed the
13 Court that they have conducted a reasonably-diligent
14 search but not an unduly burdensome search. And we just
15 want details because we haven't got those that what do
16 they consider or can they describe their
17 reasonably-diligent search so that we're comforted that,
18 okay, it's diligent; we don't want anything more. And
19 what do they consider an unduly burdensome search?
20 Because, for example, searching by the name of the
21 competitor in their e-mails or documents wouldn't be
22 unduly burdensome to us but it may be to plaintiffs.

23 So, we just want to understand what was done in
24 response to our request because they kept saying that
25 they don't understand the requests; they're not going to

1 produce, and then suddenly when this issue came before
2 the Court, they said, well, actually, we produced
3 documents. So we just want the details of the search
4 and what they haven't searched and we'll just be
5 satisfied with that.

6 THE COURT: Well, let me ask this: Extreme
7 says it produced its documents.

8 MR. PRABHAKAR: Yes, Your Honor.

9 THE COURT: So, can you describe what Extreme
10 did? Describe Extreme's search.

11 MR. PRABHAKAR: Sure, Your Honor. So, one of
12 the named entities on this list was Net-SNMP, and in
13 many of our products, we had replaced plaintiffs'
14 software with the Net-SNMP. So we basically ran a
15 search for Net-SNMP on all our engineering custodians,
16 and whatever documents, e-mails, all popped up, we
17 produced all of that. We haven't filtered any of that.

18 THE COURT: Okay. All right.

19 MR. WOOD: Your Honor, so, as we said in our
20 paper, we believe we have produced all the documents we
21 can find after a reasonably-diligent search.

22 THE COURT: Can you describe the search so that
23 there is an understanding of how it was conducted.

24 MR. WOOD: Yes, Your Honor. So, what we
25 discovered was that over the course of SNMP's history,

1 they had kept competitive information in two places. It
2 was an online file that we discovered, online directory,
3 and there was a paper file where they would file things
4 away. And, so, it appeared as things came in that they
5 thought were relevant, competitive information, they put
6 those in one of two places, as far as we can tell, and
7 we produced both of those.

8 We think it's unduly burdensome to search, you
9 know, 25, 30 years of e-mails and try to determine if
10 any mention of any -- any entity was somehow what
11 they -- what they want as competitive information when
12 SNMP is in -- that's their business. It's in their
13 space. They're going to get questions from customers;
14 they're going to get other things, and to try to filter
15 through all that, we think would be unduly burdensome.
16 And, so, we've produced what SNMP through the years
17 thought was relevant competitive information, and --

18 THE COURT: So everything in the online
19 directory and everything in the paper files?

20 MR. WOOD: Yes.

21 THE COURT: Okay. Thank you.

22 MR. WOOD: Thank you.

23 THE COURT: Mr. Prabhakar, so, you've heard his
24 explanation that they have looked to see what SNMP
25 considered competitive information. They kept it in

1 those two places and given you everything. And, so,
2 what else would you be looking for? He's described what
3 he considered unduly burdensome by doing any, you know,
4 further search beyond these two files.

5 MR. PRABHAKAR: Your Honor, I do think that an
6 e-mail search for the competitors is appropriate because
7 this goes to the heart of the damages issues in this
8 case.

9 Now, what I hear counsel telling us is that
10 they may have received questions from their customers
11 saying, why shouldn't I move to Net-SNMP; it's free. We
12 would like to know, to assess the key issue in this
13 case, the value of plaintiffs' copyrighted software, how
14 did SNMP Research respond to them.

15 So, while we're satisfied that they have looked
16 at their online files, but that information in the
17 online files came from somebody's e-mails.

18 So, did everybody put that information there,
19 not put that there? Because right now over a period of
20 SNMP's existence over 20 years, we have located about
21 100 e-mails and documents related to their main
22 competitor, Net-SNMP, and we haven't seen any documents
23 for some of the other competitors.

24 So, given the importance of this issue in this
25 case, Your Honor, because it's -- it's relevance versus

1 burden, relevance here is really, really high to our
2 damages case. It goes to the heart of the apportionment
3 issue. We think a little more, if Your Honor is willing
4 to allow us, would be helpful.

5 THE COURT: Well, it appears that they have
6 requested Extreme to provide some search terms to assist
7 it since it's years of e-mails. So, what is Extreme's
8 position on that?

9 MR. PRABHAKAR: So, Your Honor, the -- the
10 slight challenge there is: We can provide some obvious
11 terms, which is Net-SNMP, now that we know it's a
12 competitor, but Extreme's a networking company. We
13 don't make -- we don't write SNMP Research software.
14 Like, Extreme would be the best judge of who its
15 competitors are. Just like that, plaintiffs would be
16 the best judge and would have the best information of
17 companies that they consider their competitors.

18 That was our hesitation in providing search
19 terms because if I only know of two competitors, then I
20 have artificially limited the relevant information that
21 I could get because plaintiffs could have had a list of
22 six competitors. So that was the hesitation, Your
23 Honor. It wasn't that we were trying to be difficult,
24 but because we thought plaintiffs have the best
25 information. And if they would have given us, say, a

1 list of what they consider competitors, we would have
2 crafted search terms. And we are still willing to craft
3 search terms if they are willing to entertain that.

4 THE COURT: Well, let's go back -- before you
5 sit down -- back to the process that Extreme utilized to
6 do its production. So, what all did you include in your
7 search terms?

8 MR. PRABHAKAR: Net-SNMP, Your Honor. The
9 broadest possible search we could find, we actually
10 included.

11 THE COURT: So, that's it?

12 MR. PRABHAKAR: Yeah, just a single keyword
13 search. We couldn't go broader than that. We didn't
14 limit it any more. And we ran it on our engineering
15 custodians who would have had access to those documents.

16 So, if they're willing to identify, for
17 example, the principal of the company who would
18 likely -- you know, he's a pioneer in this case. He
19 would have the best information about competitors. He
20 would get questions about competitors. If they would
21 just search his e-mails for what they think are
22 competitors, I think we'll be satisfied, Your Honor.

23 THE COURT: Okay. Mr. Wood. Is there an
24 agreed-upon list of search terms that could be
25 developed?

1 MR. WOOD: I think so. We were surprised that
2 Extreme did not want to discuss search terms with us.
3 They just kept saying, "Give us everything, but we're
4 not going to even work with you on search terms."

5 THE COURT: It sounds like part of the process
6 would be identifying the competitors, which Extreme is
7 saying that they did their search with just the name of
8 their known competitors. So that sounds like that would
9 be part of the process.

10 MR. WOOD: Uh-huh. And I think we would
11 disagree that even just random e-mails, it may mention a
12 competitor's name are somehow relevant. I think, one,
13 if we're going to go down the road of searching, one
14 thing we could do is maybe filter out support e-mails or
15 certain types of e-mails --

16 THE COURT: Uh-huh.

17 MR. WOOD: -- that probably aren't going to
18 have anything -- any discussion of value.

19 THE COURT: Uh-huh.

20 MR. WOOD: It would just be a technical -- more
21 of a technical discussion.

22 THE COURT: And it sounds like there could be
23 limitation on whose e-mail is searched as well. So, I
24 think I would like the parties to meet and confer on
25 this and develop a list of appropriate search terms.

1 MR. WOOD: Okay. Thank you, Your Honor.

2 THE COURT: Thank you.

3 All right. We're coming upon the noon hour.

4 Do you all want to take a short lunch break, or do you
5 want to continue working through some items?

6 MR. PRABHAKAR: It's up to Your Honor, frankly.

7 MR. WOOD: Yes, up to you, Your Honor.

8 THE COURT: All right. Well, let's go ahead
9 and finish topic 4 then, and then I, myself, have
10 segregated topic No. 5 into a separate issue. So we'll
11 end after topic 4 and take a short lunch break.

12 All right. So, this is Extreme's claim that
13 plaintiff refuses to produce license agreement related
14 to software that predates the formation of SNMPR
15 International. So these are the pre-1994 agreements.

16 MR. PRABHAKAR: Correct, Your Honor.

17 THE COURT: All right.

18 MR. PRABHAKAR: And we only request these
19 agreements because I know -- and Your Honor knows
20 because you've ordered the production of license
21 agreements that they have produced a lot, but these are
22 really key because these are license agreements before
23 the formation of the licensing entity.

24 THE COURT: Uh-huh.

25 MR. PRABHAKAR: And it goes to a key defense

1 that Extreme has, which is Extreme's position is that
2 part or all of the code that is contained or that is
3 within the scope of SNMP Research's copyright
4 registration was published, and because it was published
5 before it was registered, some code or maybe all the
6 code is not entitled to copyright protection.

7 Now, there may be reasonable dispute about
8 whether our legal theory at this stage is right or
9 wrong, but that's not what we have to resolve at the
10 discovery stage.

11 We understand there are few licenses pre-1994.
12 We understand that the plaintiff, by its own website in
13 1988, had ten customers. So we're talking about a
14 six-year period. And we understand in the context of
15 other topics that plaintiffs' licenses are separated --
16 hard copy files are separated by licensee. Electronic
17 files are easy to search. So this shouldn't be very
18 burdensome.

19 Now --

20 THE COURT: Let me ask you this, though: Why
21 do you need the actual agreement if all the terms from
22 that agreement are incorporated in everything they have
23 given you?

24 MR. PRABHAKAR: Because we don't know, Your
25 Honor, if they were. Because, as you can imagine, a

1 company starts in 1988. It's a start-up. Dr. Case,
2 like, built it up from scratch. It is possible that the
3 earlier agreements had different terms, different
4 confidentiality terms, different distribution terms, and
5 as the company gained more experience, more customers,
6 learned more about the business, would have improved
7 upon its licensing terms. It would have maybe addressed
8 some confidentiality issues that were not addressed in
9 the prior agreements.

10 So, that's the -- there may be information that
11 is valuable to our defense there, Your Honor. That's
12 what we're trying to assess, how did the
13 confidentialities, one of the terms it morphed as the
14 company got more mature and became a more sophisticated
15 licensing entity than what it was in the beginning.

16 THE COURT: Okay.

17 MR. PRABHAKAR: And the only distinction that
18 plaintiffs try to draw is the difference between an
19 active licensee versus an inactive licensee.

20 But for our purposes, Your Honor, let's
21 say -- in a hypothetical situation, we talk about why
22 active and inactive doesn't really matter. Let's say
23 I'm a provider of technology and I have -- I supply
24 confidential information or confidential products to my
25 client, and in the beginning, I didn't have a stringent

1 confidentiality restriction in my agreement or in my
2 dealings with that client. I became more mature. I
3 developed stronger protection. But that company is no
4 longer my client and now I'm providing the same
5 confidential information to another company. But
6 because I had already provided it, for example, in a
7 nonconfidential manner with an earlier client, the fact
8 that that party is not a client anymore doesn't change
9 the fact that my information is already out there in a
10 nonconfidential manner.

11 So that's why the active and inactive
12 distinction for the purposes of our key defense doesn't
13 really make much of a difference to the relevance of the
14 documents because the fact that these licenses
15 transferred to something else and had potentially
16 different terms still doesn't change the fact that at
17 some stage, they were governed by a different agreement
18 with different terms, and those terms are relevant to
19 our defense; otherwise, we wouldn't be asking for those.

20 THE COURT: Okay.

21 MR. WOOD: Your Honor, so --

22 THE COURT: Am I understanding it correctly
23 that you are representing that the licenses you have
24 produced include the pre-1994 terms?

25 MR. WOOD: So, in 1994, when SNMP Research

1 International was formed, any active license was
2 transferred to SNMP Research International and
3 continued. And, so, those -- those are SNMP Research
4 International licenses, and we've produced all of those
5 as Your Honor ordered us, I think, a little over a year
6 ago.

7 THE COURT: Uh-huh.

8 MR. WOOD: So I don't remember the exact
9 number, but close to a thousand licenses. So we've
10 produced a lot of licenses. And we -- it goes back
11 30 years. So, we've produced 30 years' worth of
12 licensing agreements.

13 What wouldn't have been produced and what
14 they're asking us to find -- so, I think that there
15 would be some duplication because we've already produced
16 some. If someone was an SNMP Research, Inc. customer
17 and then was no longer a customer in 1994, that
18 agreement -- that agreement was inactive in 1994, then
19 it would not have been transferred because they weren't
20 a customer anymore. There was no reason to transfer it.

21 So, that's -- so, I think they -- they do have
22 a lot, and I think they could have -- there has been
23 no -- no effort, no showing that any of these agreements
24 that actually transferred, you know, show any of these
25 terms that they think they need to get to.

1 We also -- Mr. Prabhakar keeps saying this
2 relates to the publication issue. We don't -- we don't
3 dis- -- we don't agree with their issue. We -- we
4 certainly understand they -- they have that issue, and
5 they do have, I think, the right to get discovery, but
6 they have 30 years' worth of licenses. I mean, they
7 have everything. I don't know why they need more, why
8 they need to go back even further.

9 It's almost like saying, well, if -- their
10 stance is: Well, if you published it before you
11 registered it, then your registration is invalid. Well,
12 they have licenses back to 1994. Our registration was
13 filed in 2011, 2012. So, they already have -- I think
14 if -- you know, to work up that issue, they have
15 everything they need. They don't need these other ones.

16 And, so, we're just -- we thought we were
17 producing what was relevant. We thought even going back
18 30 years was probably too much. We tried -- we did, you
19 know, something less. They wanted more. We did that.
20 Now they want even more. So -- which we think we
21 shouldn't have to do that.

22 THE COURT: Okay.

23 MR. WOOD: Thank you.

24 THE COURT: Mr. Prabhakar, what would not be
25 duplicative in your request?

1 MR. PRABHAKAR: Licenses that didn't transfer,
2 Your Honor --

3 THE COURT: Uh-huh.

4 MR. PRABHAKAR: -- or licenses that transferred
5 but originally had different terms, confidentiality
6 terms in particular, those would be what we want. And
7 we haven't -- I mean, we've talked about burden in the
8 abstract, but they haven't provided us how many
9 licensees were inactive that didn't transfer which would
10 help us narrow our request.

11 Because we keep going back to, Your Honor, the
12 requesting party always wants more, but it's always
13 helpful to get information back to help reach a
14 resolution without wasting the Court's time, and we just
15 don't have that information. But from what we had, we
16 don't believe the burden should be too high.

17 THE COURT: Mr. Wood, how -- how many would we
18 be looking at if they fall in the category of not being
19 duplicative, those that did not transfer?

20 MR. WOOD: I'm not completely sure. I haven't
21 done the analysis to find all these agreements. You
22 know, it's probably a few hundred files. I don't know
23 how many licenses that would be. And, like I said, some
24 of those have probably already been actually
25 transferred, and, so, they're showing up, you know, in

1 two different places. So, we have -- we'd have to go
2 through all of it. We'd have to go through all of it to
3 figure it out.

4 I think it's also worth pointing out, there
5 is -- you know, they said they needed the
6 confidentiality terms. This is not a trade secret case.
7 This is a copyright case. So I'm not sure that that is
8 even completely relevant. But --

9 THE COURT: I guess my thoughts would be:
10 Could there be just a sampling produced that would fall,
11 you know, within this non-duplicative category? That
12 way they can see the terms and just see if they evolved
13 into those that were transferred just through the
14 sampling.

15 MR. WOOD: I mean, we could try and find a
16 couple of -- you know, a few pre-1994 licenses and
17 produce those, if that's what Your Honor's suggesting.

18 THE COURT: I -- I think that sounds like it
19 would satisfy what Extreme's looking for because you're
20 looking for the evolution of those terms. So, if you
21 have, let's say, three pre-1994 --

22 MR. PRABHAKAR: I do not want to bargain with
23 you, Your Honor, but if we could just get a list, we can
24 maybe try to narrow from there because we've already
25 narrowed to inactive licenses which didn't transfer.

1 And I hate to give up, but I don't want to annoy Your
2 Honor. I'm really trying to work with you here. But
3 this is -- this is important to us. That's why we're
4 asking for it.

5 THE COURT: Mr. Wood, can you put a list
6 together?

7 MR. WOOD: We can do a list. I don't know how
8 that's going to help them without seeing the terms. I
9 guess I would propose: Let's produce, you know, one
10 from the '80s, one from '91 and one from '93, or
11 something like that, so they can see the -- if that's
12 what they want to see is the evolution.

13 THE COURT: Well, I guess if there could be a
14 list and the name and the date and then let Extreme,
15 say, pick five.

16 MR. WOOD: Okay.

17 THE COURT: And for -- and they can make their
18 selection whether it's on different time periods or some
19 other basis. But that should be able to give some
20 indication of the evolution that they're looking for.

21 MR. WOOD: Okay.

22 THE COURT: All right.

23 MR. WOOD: Thank you.

24 THE COURT: All right. Let's go ahead and take
25 our lunch break. It's a little after noon anyway, and

1 we'll just plan to be back here at 1:00. Okay?

2 MR. LEE: Thank you, Your Honor.

3 MR. WOOD: Thank you, Your Honor.

4 THE COURTROOM DEPUTY: All rise. This
5 honorable court stands in recess.

6 (A lunch recess was taken.)

7 THE COURTROOM DEPUTY: All rise. This
8 honorable court is again in session. Please come to
9 order and be seated.

10 THE COURT: All right. I hope everyone had a
11 nice quick lunch.

12 And I, as I stated earlier, have deemed this
13 the second issue, even though it was discussed in part
14 under the first topic, but this is Extreme's claim that
15 SNMPR refuses to respond to Interrogatories 9 through 17
16 and the improper assertion of discreet subparts in
17 Interrogatories 6, 7 and 8.

18 If I could turn to you, sir. I just need to
19 get logged in. Okay.

20 MR. PRABHAKAR: Your Honor, nearly 11 months
21 ago, we served 11 interrogatories on plaintiffs. We
22 received answers to less than three. For all the
23 interrogatories, plaintiffs asserted discreet subpart
24 objections and counted the subparts in a way that meant
25 that they did not have to answer key contention

1 interrogatories beyond the first two-and-a-half.

2 Courts in the circuit use the related question
3 test which asks, "Are the subparts factually or
4 logically related?"

5 Extreme served sub-interrogatories that we
6 believe passed the related question test. We asked
7 plaintiffs to withdraw the subparts objections and
8 respond to the interrogatory fully.

9 We asked for legal authority in support of
10 their subpart objections, and we got a case from them
11 which was inapplicable under the standards followed by
12 courts in the Sixth Circuit.

13 Plaintiff cited to *Taylor* from Middle District
14 of Tennessee, a 2008 case. Sorry. We cited *Taylor*, a
15 Middle District, Tennessee case, which sets the related
16 question test. *Taylor*, as recently as 2021, has been
17 cited by cases -- by courts in Tennessee.

18 Plaintiffs rely on a 2002 opinion from
19 *Medtronic* which uses a discreet information or discreet
20 question standard that courts in the Sixth Circuit,
21 particularly *Taylor*, have expressly rejected.

22 There is, in fact, guidance in the Advisory
23 Committee notes that puts a question on the discreet
24 information test. The Advisory Committee note says,
25 "Seek information about discreet subjects, not

1 questions," which is consistent with the related
2 questions test.

3 To put a finer point on this, Your Honor, these
4 are all contention interrogatories that go to the heart
5 of the issue. By imposing improper subpart objections
6 for over a year, plaintiffs have evaded their obligation
7 to provide us fulsome contentions related to their
8 claims, related to their source code.

9 We think each of these objections of subparts
10 are improper, and our count of interrogatories is
11 correct to 17, and they should now remove their subpart
12 objection and answer each of these interrogatories, the
13 ones that have not been answered.

14 THE COURT: What I do have a question about is
15 No. 17.

16 MR. PRABHAKAR: Yes, Your Honor.

17 THE COURT: It states -- it includes a
18 statement, "as well as other methods of managing network
19 devices." So, I'm just wondering if that being included
20 makes that a discreet subject.

21 MR. PRABHAKAR: Give me just one second.

22 THE COURT: Certainly, uh-huh.

23 MR. PRABHAKAR: Your Honor, it does not, for
24 the simple reason that -- let's look at the language
25 before "including," which is what the related question

1 test looks at. "Identify and describe all alternatives
2 or competitors to the software material at issue." It
3 says, "Alternative implementations of SNMP protocol
4 which is a method of managing network devices." So, in
5 some sense, there is no difference between other methods
6 of managing network devices because SNMP is a method for
7 managing network devices.

8 So, we still think it's within the same broader
9 question, that what are the alternatives to the software
10 material at issue, and we ask for alternative
11 implementations of SNMP, which is a method of managing
12 network devices.

13 THE COURT: Thank you.

14 MR. PRABHAKAR: Thank you, Your Honor.

15 MS. WEBER: Good afternoon, Your Honor. Olivia
16 Weber on behalf of plaintiffs SNMP. I'll be handling
17 the subpart issue, and I have three points to make.

18 First of all, we had offered -- plaintiffs had
19 offered a reasonable compromise back in the spring,
20 almost a year ago, that should have mooted this entire
21 subpart counting issue as to the second set of
22 interrogatories from Extreme. We said if Extreme wanted
23 to serve more interrogatories to account for what we
24 believed were multiple subparts that we would consider
25 that, and we were willing to give them more, as long as

1 the compromise went both ways. And Extreme's recitation
2 of the compromise in its position statement does not
3 acknowledge that. So I wanted to make it clear in that
4 we made this offer to Extreme multiple times over the
5 past 11 months and that the offer still stands.

6 On the merits, the relevant question is whether
7 the subpart is discreet. That's the language of Rule
8 33. And Mr. Prabhakar stated that one test is the
9 related question test. There are also courts, many
10 courts, that apply the independent question test, which
11 asks -- and this is from *Medtronic* which is a Western
12 District of Tennessee case -- can the subsequent subpart
13 stand alone? Is it independent of the first question?
14 Discreet or separate questions should not be counted as
15 separate interrogatories.

16 And then we cited the *Superior Communications*
17 *v. Earhugger* case, which ruled that interrogatories
18 requesting all facts in support of a contention and then
19 identifications of persons and identification of
20 documents are three discreet topics.

21 And that's our main problem with the second set
22 of interrogatories that Extreme has served, and I can
23 give an example. I'm sure -- it sounds like you're well
24 familiar. You've asked questions about the numbers. So
25 please stop me if it's getting duplicative. But

1 Interrogatory No. 6 says, "Identify and describe all
2 facts relating to your contention that Extreme has
3 breached any license." And then, so, we interpret all
4 of these subparts as asking questions about all facts in
5 support of the contention. That's Roman Numeral II,
6 III, IV.

7 And then they ask for all individuals involved
8 in or with knowledge of the alleged breach. That's
9 identification of all persons. And we were careful in
10 our interrogatories to separate out requests about
11 identification of facts from identification of
12 individuals.

13 And then No. IV, they ask about any documents
14 relied upon in your response by Bates number,
15 essentially asking us to do a Rule 33(d) response.

16 And let me also go to -- or I should -- before
17 I move on to another one. So, this has multiple
18 discreet subparts for not only the reasons that I just
19 mentioned, the three reasons, facts, persons and
20 documents, but they're asking for our contention that
21 Extreme has breached any license. And in this case, we
22 have made two contentions about breach, breach of the
23 2001 license agreement and breach of the Enterasys
24 license.

25 And so as you can see from our responses, it

1 took nearly a dozen pages to set forth the facts in
2 support of the contention of the 2001 Extreme license
3 and then all of the facts in support of the breach
4 regarding the Enterasys license.

5 And if you'll go to -- I'll put it up on the
6 screen.

7 THE COURT: Your contention is that these are
8 separate subparts based on the independent question
9 test. What would be your position if the Court was
10 employing the related questions test; would you agree
11 that all of these are related questions?

12 MS. WEBER: I think that they're related, but I
13 also think there would need to be some common sense way
14 to interpret the related question test. I think it goes
15 a bit beyond that here because under the related
16 question test, what Extreme is essentially asking this
17 Court to do is, if they have -- if Extreme were to have
18 a broad question upfront, which I think they do, all
19 facts relating to your contention about breach, then
20 they can ask any subpart related to that.

21 Similarly, they could say, identify and
22 describe all facts in support of your claims, which is
23 very similar to what they have done here. And then they
24 could ask about claim 1; they could ask about claim 2;
25 they could ask about defense 1, defense 2, defense 3,

1 and I think the logic doesn't hold up. And they're
2 certainly related, but I think in a very broad umbrella
3 sense.

4 And we've been very diligent to separate out
5 our requests even if they're related. You have requests
6 that go to facts, requests that go to documents and
7 requests that go to individuals, and we've held
8 ourselves to that standard.

9 I think this next one gives an example of some
10 of the mischief that's being caused. Interrogatory No.
11 7 says, "Identify and describe all facts relating to
12 your discovery of the facts that you believe give rise
13 to your claims." So they're wrapping in all of our
14 claims here. And then they say -- Roman numeral I is
15 the copyright claim, No. II is the fraud claim and No.
16 III is alleged breach of any license.

17 Then they ask for all of the facts that go to
18 the day of the discovery, the circumstance, and then
19 they ask for identification of all the individuals and
20 all the documents. I think that's far too expansive of
21 an approach. And I'll give -- this brings me to my
22 third point, and it concerns -- this is an issue that
23 came up last week, and, so, I won't delve into it too
24 deeply unless you would like me to, but it's with
25 respect to Extreme Network's responses to SNMPRI's third

1 set of interrogatories that their claims have multiple
2 discreet subparts. And I'll just give one example to
3 show the contrast.

4 So, this is our -- sorry. This is SNMP
5 Research International, and we say, "For each product
6 that Extreme has identified as an accused product that
7 contains the SNMP Research software, identify which
8 license agreement Extreme believes gives it the right to
9 use SNMP Research software in those products."

10 And they -- their responses say this is full of
11 discreet subparts pertaining to multiple different
12 licenses and multiple different claims. And, here, this
13 is really parallel to the Interrogatory No. 1 that Your
14 Honor has enforced two times over the past couple of
15 years where Interrogatory 1 says, and I'll paraphrase,
16 identify every Extreme product that uses SNMP Research
17 software, and they identified that.

18 In turn, now we're saying, for each and every
19 one of those products, identify the license agreement
20 that you believe gives you authorization to use SNMP
21 Research software in those products.

22 So, I think if you look at the contrast between
23 the interrogatories that Extreme has served and we have
24 served, it would be -- Extreme has really pushed the
25 boundaries of how expansive their interrogatories are,

1 and they really should only be asked -- if they're
2 asking for a contention rog, that's fine. Contention
3 rogs are appropriate, and we are willing to and have
4 listed all of the facts in support of our contention.
5 And we will continue to supplement as we get more
6 discovery, but they shouldn't also be able to ask under
7 the independent question test, or even the related
8 question test, now also identify all individuals with
9 knowledge and all relevant documents.

10 THE COURT: Okay.

11 MS. WEBER: Does Your Honor have any questions?

12 THE COURT: When you started, you stated that
13 you had proposed that they be able to rewrite them and
14 put them in separate, but that was only under the
15 provision that you would then be allowed to serve more
16 interrogatories; is that right?

17 MS. WEBER: If they needed more. So, our
18 compromised proposal included or set forth that they
19 still had 20 interrogatories remaining, and our
20 compromise was that not only were those -- could they be
21 served by SNMP -- or excuse me. Not only could they be
22 served on SNMPR, they could also be served on SNMPRI.
23 So Extreme could distribute the 20, however many it
24 wanted, and if it needed more, because of the way we've
25 interpreted the multiple subparts, we'd be willing to

1 negotiate a reasonable additional number of
2 interrogatories. And if, say, they got five more or ten
3 more, then we would get the same amount of additional
4 interrogatories.

5 And that falls in line with our -- the
6 plaintiffs' initial proposal in the Rule 26(f) report
7 where we initially proposed 75 interrogatories per side
8 and now we're at 50 per side. And we've gone with Rule
9 33. Rule 33 is numerical limits. So we would be
10 willing to negotiate more as long as it went both ways.

11 THE COURT: What other courts besides the
12 Middle District of Tennessee has employed the
13 independent question test?

14 MS. WEBER: Well, there is multiple -- there is
15 at least the *Earhugger* case that we've cited from the
16 Central District of California. And I can give you a
17 few more case cites. They come from -- I'll have to sit
18 down and check for it, but I believe it's the D.C.
19 Circuit. And there is one other that's escaping me, but
20 there are other courts that have done it. I should say
21 D.C. District Court. I'm sorry.

22 THE COURT: Do you recall if there was anything
23 specific about the cases before them?

24 MS. WEBER: What I do recall is that it was the
25 similar holding to *Earhugger*, which those courts said

1 that you could not -- it violated the separate
2 questions -- the independent question test to ask an
3 interrogatory that sought all facts, identification of
4 persons and identification of documents.

5 THE COURT: Okay. Thank you.

6 MS. WEBER: Thank you.

7 MR. PRABHAKAR: Your Honor, a couple of
8 responses. I'm not sure where to start, but the first
9 point that I want to make is: Plaintiffs' counsel
10 described Rog 7 as mischief. I don't think we intend
11 any mischief. We understand Sixth Circuit to follow the
12 related questions test, and we crafted interrogatories
13 which, in good faith, followed the related question
14 test. There is certainly no mischief intended because,
15 as you can see, we were only through Rog 17 out of the
16 25 allowed. So, if we intended mischief, we would have
17 been all the way up to 25, and now we're like
18 scrambling, oh, wait, we need to ask these three
19 separate questions so we need to cram them in. So,
20 there is certainly no mischief intended, and I can
21 assure Your Honor of that.

22 Now, as you've seen this morning, Your Honor,
23 Extreme has no problem compromising if it keeps disputes
24 out of this court. But this is a fairly fundamental
25 disagreement about what law applies to counting

1 subparts.

2 Compromise implies that we did something wrong,
3 we think we did something improper under the law, and,
4 therefore, now, to avoid wasting the Court's time, we
5 somehow entered into a deal. But given that we had a
6 good-faith basis that these rogs were proper, we think
7 until we got the Court's guidance, we do not think a
8 compromise is proper.

9 And I think not to go towards motives, but
10 plaintiffs' counsel briefly alluded to the 75
11 interrogatories. What it sounds to me is that this is a
12 way to force us into agreeing to more interrogatories.
13 They have already got 50 interrogatories.

14 Your Honor is very familiar with the scope of
15 discovery in this case earlier with respect to document
16 production. You're seeing it in the context of 30(b)(6)
17 depositions, and you're now seeing it in the context of
18 recipient witness depositions. So, we think, Your
19 Honor, getting to the compromise is putting the cart
20 before the horse.

21 Let me briefly indulge the Court on the
22 substantive issue. This is the opinion from *Taylor*. It
23 says, "Courts in the Sixth Circuit utilize the related
24 questions test." Couldn't have been said more clearer.
25 *Robinson* -- this is a 2008 opinion, Your Honor.

1 *Robinson*, which is a 2021 opinion from not the
2 Middle District of Tennessee but the Western District of
3 Tennessee, that cites to *Taylor*, and we cite to that in
4 our brief.

5 So, we have 2008 through 2021, courts not only
6 relying on *Taylor*, but *Taylor's* express statement about
7 the test that courts in the Sixth Circuit follow.

8 Plaintiffs cite to *Earhugger*, and I don't want
9 to keep putting up cases because, Your Honor, they have
10 already been cited in our brief, but *Synopsis* from
11 California -- I mean, I'm not even going to -- I'm from
12 California, so I don't want to say anything about the
13 Central District of California not applying here, but a
14 California district court has expressly said *Earhugger*
15 is unpersuasive.

16 So the two cases that plaintiffs rely on, first
17 to say that we're causing mischief, second to say that
18 we're not compromising, are bad law in this circuit.

19 Now, if we look at *Synopsis*, Your Honor,
20 *Synopsis* has a line which, if we relied on, would make
21 it impossible for plaintiffs to serve any
22 interrogatories because what *Synopsis* holds is an
23 interrogatory that asks questions about multiple
24 products at issue in a case is a discreet subpart.

25 Now, my -- plaintiffs' counsel showed you

1 Extreme's interrogatory response, and if I may ask for
2 our response briefly to show the Court, what you would
3 see -- what you would see, Your Honor, what we have said
4 is not a blanket objection. What we have said is that
5 if plaintiffs' theory of subparts is correct, then this
6 interrogatory has discreet subparts.

7 So, if Your Honor says today that it's the
8 related questions test and an interrogatory that touches
9 upon multiple claims -- an interrogatory that refers to
10 multiple claims, each of which is a discreet subpart,
11 then our objections stand.

12 But if they don't, if the Court tells us today
13 that, no, if it's the related question, no matter
14 whether it covers multiple licenses or covers multiple
15 claims, it's -- if it satisfies the related questions
16 test, it's not a discreet subpart, our objections would
17 not stand and we will promptly withdraw them.

18 But if plaintiffs are going to take a position
19 on their interrogatories -- and, Your Honor, they say
20 that expressly in their brief that -- and they say that
21 in their objections to the interrogatories that you have
22 that this is discreet subparts because it relates to
23 different claims and different licenses. Their
24 interrogatory about our products covers two discreet
25 claims, two expressly-stated claims and one alleged.

1 There is the copyright infringement claim against
2 Brocade products, there is the breach of contract claim
3 against Extreme, and then there is the Enterasys
4 products against which there is no claim.

5 So, if their position is that different claims
6 and different licenses are different discreet subparts,
7 then I think our objections are proper.

8 Now, let me go back to what plaintiffs' counsel
9 said about mixing up documents, persons and facts. I
10 have not seen a single case that says you cannot mix a
11 narrative response and a 33(d) response. We have done
12 that in our responses. Plaintiffs have done that in
13 their responses. So, to the extent that it asks for
14 identification of facts as well as documents, that
15 doesn't necessarily make it a discreet subpart.

16 Then there is the practical problem. If the
17 contention seeks to know the identity of people that
18 have knowledge about that so that we can serve
19 deposition notices under plaintiffs' construction of the
20 discreet question test, or they may call it an
21 independent question test, I would have to serve two
22 interrogatories; identify all the facts relevant to your
23 breach of contract claim. I would have to serve another
24 interrogatory saying, identify all the documents which
25 may be the documents they cite ultimately in the facts.

1 And then I'll have to serve a third interrogatory asking
2 for identification of persons who had knowledge about
3 the breach of contract case.

4 Setting aside that not only is this not
5 required by the federal rules, it creates excessive
6 burden on the court because, Your Honor, all three
7 pieces of information are related to the contention and
8 we need those pieces of information.

9 So, if the standard is that I have to serve
10 three interrogatories to get to this question, we would
11 be back in this court with repeated requests for more
12 interrogatories. So, not only is it not the federal law
13 in this circuit, it just imposes additional burden on
14 the Court and it's impractical.

15 Our contention response necessarily involves
16 facts, involves documents, involves people. So we do
17 not think any of our interrogatories have discreet
18 subparts. And, therefore, under the proper test in this
19 district, the subpart objections that plaintiffs have
20 imposed are improper, and the question of compromise
21 does not arise unless plaintiffs wanted to force us into
22 a compromise to get more interrogatories.

23 MS. WEBER: I will be brief. First, there are
24 courts in the Sixth Circuit that do apply the related
25 questions test. There are also courts in the Sixth

1 Circuit that apply the independent question test. And
2 we cited at least one to Your Honor. *Taylor*, the case
3 that *Extreme* is relying on, is not controlling
4 authority. But, regardless, I -- I think the holding in
5 that case, ultimate holding as applied to the facts,
6 makes sense.

7 The interrogatory that was approved asked for
8 identification of the persons and to give their name,
9 address, phone number, and place of employment, and I
10 think that's -- that is essentially an identification of
11 a person and how to contact them, and I think that all
12 makes sense here. So even what *Taylor* did makes sense.

13 The two other cases that I wanted to cite to
14 Your Honor that make the point that interrogatories
15 requesting identification of all facts, persons and
16 documents are improper, I believe one case is
17 *Kendall* -- I can't read my own writing. I'll give you
18 the case number. 174 F.R.D. 684. That's District of
19 Nevada. And then *Banks v. Office of the Senate*. That's
20 222 F.R.D. 7. That's the District Court of -- in D.C.

21 Going briefly to Interrogatory No. 7 that
22 SNMPRI recently served, I will say that the reason we
23 served this interrogatory is because during the meet and
24 confer process over the 30(b)(6) notice, one of the
25 topics that was in dispute was whether we could ask

1 questions about the scope of the Enterasys license and
2 Extreme's knowledge and belief about how expansive that
3 license was and what it covered and what -- that was in
4 November. And Mr. Prabhakar's response was, well, you
5 haven't even served an interrogatory asking us about the
6 Enterasys license and what is -- what products are
7 licensed under that.

8 So we served this interrogatory two days later,
9 and we still don't have a substantive answer. They
10 haven't taken a position. Fact depositions are ongoing.
11 Expert reports are currently due in a month, and we
12 still don't know Extreme's fact positions on what
13 products that use SNMP Research software are covered by
14 what license, if any.

15 Those -- this interrogatory is not asking
16 about, state all facts in support of your contention in
17 support of this claim and in support of the second
18 claim. It's just like Interrogatory No. 1 that Your
19 Honor already enforced, which is, identify each product
20 containing SNMP Research software, and here, it's just
21 identify -- for each product containing SNMP Research
22 software, identify the applicable license. It's very
23 simple. And it's not a different claim just because
24 Extreme may say that one product is purportedly licensed
25 by one license and one prod- -- a different product is

1 purportedly licensed by another.

2 My final point is that using 33(d) to respond
3 to an interrogatory request is very different than being
4 forced to identify all relevant documents in support of
5 the party's answer to the interrogatories.

6 So, yes, we have used Rule -- we have relied
7 upon Rule 33(d) where appropriate. But I think that's
8 normal and parties do it all the time. It's one thing
9 to do that and it's another to be forced to identify all
10 relevant documents.

11 Unless Your Honor has any questions --

12 THE COURT: I don't.

13 MS. WEBER: -- I will sit down. Thank you.

14 THE COURT: Okay. With respect to this
15 issue -- do you have something you want to add?

16 MR. PRABHAKAR: Just one very --

17 THE COURT: Okay.

18 MR. PRABHAKAR: -- brief point, Your Honor, and
19 it's not argument. Plaintiffs make a point that they
20 want contention interrogatories answered. We
21 wholeheartedly agree with them. We also want our
22 contention interrogatories answered. We're a month away
23 from expert reports. We have no response to any of our
24 main contention interrogatories. So, to the extent it's
25 about answering contention interrogatories, we're all

1 for it, as long as plaintiffs do the same.

2 THE COURT: All right. Well, perhaps you all
3 can have some discussions on the one that was raised
4 that's not before me today. So, I'm not ruling on that.

5 So, what is before me today, I feel the
6 appropriate related test to apply is the related
7 questions. So now I've gone through these and I'm going
8 to tell you how I've counted them.

9 So, with regard to No. 6, that appears to be
10 one interrogatory. No. 7 appears to be three because
11 it's asking about copyright infringement, fraud and
12 separately breach of any license. So I'm counting that
13 as three.

14 No. 8, one. No. 9 counts as one. No. 10, one.
15 No. 11, that will count as two. No. 12 counts as one.
16 No. 13 counts as one. 14 counts as one. 15 counts as
17 one. 16 counts as one. And with the question that I
18 asked earlier regarding No. 17, that will also count as
19 one.

20 So, it appears, based on the current count,
21 that answers must be provided to all of these because it
22 would still be under the limit.

23 Okay. We have the second issue regarding the
24 number of interrogatories served on SNMPRI, and there is
25 a question about the withdrawal of the interrogatories

1 in terms of the count. So, is that still at issue? You
2 said you had been preparing responses, but they were not
3 served, and, so, I have questions about that if it's
4 still at issue.

5 MS. WEBER: So that was part of our compromise
6 proposal is that they would not count towards any of the
7 interrogatories and they could withdraw them in their
8 entirety. And, so, if Your Honor is inclined to rule
9 that they have -- that they can withdraw them and it
10 doesn't count, we would be okay with that. But we note
11 that the rule does count interrogatories by the number
12 served, and, so, we are going with the plain language of
13 Rule 33.

14 With that said, it was part of our compromise
15 offer that they would not have to count the second
16 set -- sorry. I'll be more specific. Extreme would not
17 have to count the second set of interrogatories that it
18 had served on SNMPRI. And, so, those were 17 in total.

19 THE COURT: Okay. So what's your current
20 position? I mean, the Court's ruled the related
21 questions test. So, all the compromise is off the
22 table. So what's your position now on these?

23 MS. WEBER: It -- we're -- we're happy to
24 compromise and say that it doesn't count.

25 THE COURT: Okay. Anything that needs to be

1 addressed with that?

2 MR. PRABHAKAR: No, Your Honor, I appreciate
3 the plaintiffs' offer. But if I may, does the Court
4 have any recommendation on how much time plaintiffs have
5 to respond to the interrogatories now that many of them
6 are within the count?

7 THE COURT: Okay. Do you -- how much time do
8 you think you would need?

9 MS. WEBER: Your Honor, we would need 30 days
10 to respond.

11 THE COURT: Okay. Any issues with 30 days?

12 MR. PRABHAKAR: Your Honor, you know what I'm
13 going to say is: 30 days takes us to the end of March.
14 Some of these contention interrogatories may involve
15 facts that we may want to ask their 30(b)(6) witnesses.
16 So, that pushes our 30(b)(6) depositions pretty much
17 towards the end of March. But I'll take whatever
18 indulgence Your Honor will provide me on this issue.

19 MS. WEBER: May I add something?

20 THE COURT: Yes, you may.

21 MS. WEBER: If Extreme wants to notice 30(b)(6)
22 depositions for March, we're happy to do our best to try
23 to get substantive, fulsome responses done in three
24 weeks.

25 MR. PRABHAKAR: Three -- Your Honor, it's up to

1 the Court. I can't call the ball here.

2 THE COURT: I was going to set it at three
3 weeks. I was thinking 21 days. So, that's the same.

4 MS. WEBER: Okay. Thank you.

5 THE COURT: Three weeks.

6 So, that takes us to the third issue, which is
7 the scope of the plaintiffs' Rule 30(b)(6) topics.

8 MR. PRABHAKAR: Your Honor, would you like us
9 to address this first since technically it's our motion
10 for a protective order? But whatever you prefer.

11 THE COURT: Let me hear just a little bit about
12 the topics, and then I'll certainly allow you sufficient
13 time to address your motion for the protective order.

14 MR. PRABHAKAR: Of course, Your Honor. I just
15 wanted a clarification.

16 THE COURT: Thank you.

17 MS. RICE: Good afternoon.

18 THE COURT: Good afternoon.

19 MS. RICE: Your Honor, we have 18 topics that
20 are still in dispute.

21 THE COURT: Uh-huh.

22 MS. RICE: And I believe we've both submitted
23 submission statements on the various topics. I can
24 address the merits of those different topics if you
25 would like. I assume that's why you have me here.

1 THE COURT: And I would like to divide these by
2 topics.

3 MS. RICE: Okay.

4 THE COURT: So, for instance, I would like to
5 address No. 2 and 3. So, that's the Brocade license --

6 MS. RICE: Uh-huh.

7 THE COURT: -- and the 2001 Extreme license.
8 So I'd like to address those first.

9 MS. RICE: Great. I was kind of planning to
10 take them and group them similarly, Your Honor. So I'm
11 glad to.

12 So, the Brocade -- topics 2 and 3. Topic 2
13 relates to Extreme's knowledge about the Brocade
14 license, and topic 3 relates to Extreme's 2001 license,
15 and the topics include the interpretation of the license
16 by Extreme, the facts underlying the performance and the
17 alleged breach, their negotiation history, the notices
18 of breach, and the terminations of the license.

19 As the Court knows the history of this case, it
20 arose from the former defendant Brocade's unauthorized
21 transfer of plaintiffs' copyrighted software to Extreme
22 during an asset sale. Brocade attained that software
23 pursuant to the license which prohibited Brocade from
24 disclosing the source code to Extreme, but Brocade
25 disclosed it anyway.

1 Separately, Extreme had entered into two
2 licenses with SNMPRI, the 2001 Extreme license and the
3 1999 Enterasys license, which we can address in a
4 moment.

5 We understand -- discovered during this case
6 that Extreme was not just improperly using the code that
7 it obtained from Brocade, it was also improperly using
8 plaintiffs' code from the license agreement. And we
9 believe topics 2 and 3, again, concerning the Brocade
10 license and the 2001 Extreme license, are plainly
11 relevant to our claims of copyright infringement, our
12 claims of the breach of the 2001 license, and then the
13 fraud claims.

14 And I would point out to the Court that, for
15 example, Extreme had admitted in its response to
16 requests for admissions that it would be relying on the
17 Brocade license for defense of this action. So even
18 though Brocade is no longer in the case, we do believe
19 the Brocade license is still relevant and appropriate
20 for discovery under 30(b)(6).

21 THE COURT: Let me ask this: How would Extreme
22 know that negotiation history for the Brocade license?

23 MS. RICE: Only to the extent that it was
24 involved in working with Brocade on the transfer and
25 understanding through its requests for transfer.

1 Both parties worked with the plaintiff or
2 attempted to work with the plaintiff for a transfer, and
3 there were negotiations between all the parties about
4 that transfer. So, we believe, based on that and based
5 on e-mails that have been exchanged in the case, that
6 there was quite a bit of investigation done on the part
7 of Brocade and on the part of Extreme as to what the
8 license covered and so forth.

9 THE COURT: Okay. So the negotiation history
10 would just be limited to the transfer?

11 MS. RICE: Well, it's to whatever they would
12 have obtained from Brocade as a part of the transfer, as
13 a part of the negotiations between the three parties
14 relating to the transfer and the claims that -- the
15 questions that SNMP was asking at the time that the
16 transfer was requested.

17 THE COURT: Okay.

18 MS. RICE: Anything else? Okay.

19 THE COURT: Okay. If we can, I'd like to get
20 Extreme's position on these two topics --

21 MS. RICE: Okay.

22 THE COURT: -- before we move on to the others.
23 Thank you.

24 MR. PRABHAKAR: Your Honor asked plaintiffs a
25 question that went to the heart of lack of reasonable

1 particularity of this topic. Your Honor asked about the
2 negotiation history for the Brocade license. The only
3 answer plaintiffs came back with was the transfer of the
4 license because, to provide a little bit of background,
5 the Brocade license was entered first in 2001. It was
6 amended five times through 2015, two of which were 2015;
7 the other two -- the second and -- the first and second
8 amendments were long before 2015. Extreme did not
9 acquire Brocade's data center business until 2017.
10 So -- which brings us to the question of negotiations
11 related to transfer.

12 So, Your Honor, this is -- to make the
13 presentation easy for the Court, I had marked up the
14 different topics in the 30(b)(6) notice. The ones that
15 are highlighted red are the topics in dispute and the
16 ones that are not highlighted are the topics that
17 Extreme not only has agreed to produce a witness on, has
18 already produced a witness on.

19 So let's look into the question of transfer.
20 Topic No. 8, requests for licenses or assignments,
21 transfers, amendments of these licenses from SNMP
22 Research. And I'll ignore the language about including
23 because that basically captures the point.

24 This is not a red topic. Extreme's 30(b)(6)
25 dep witness was designated on this topic. So, to the

1 extent the only negotiation history that's relevant to
2 the Brocade topic, that has already been covered by
3 another topic.

4 Both sides cite a case called Greenway
5 Restaurants of America -- and I may be -- maybe I have
6 the wrong case name, but one of the problems with
7 reasonable particularity of the case cites is lack of a
8 limit in timeframe. And that is exactly the problem,
9 one of the problems with topic 2.

10 At its broadest scope, it seeks deposition
11 testimony about the Brocade license agreement, which
12 means everything about that license throughout the
13 existence of that license. 24 years as of today. Or if
14 we go back and be a little conservative, since the
15 license SNMP Research claims didn't transfer, 17 years,
16 out of which Extreme did not have any interest in
17 Brocade's data center business for at least 16, if not
18 all 17 of them.

19 But that's not the only issue with topic No. 2,
20 3, and, actually, topic 5 as well. Not only on the
21 factual side these topics are not reasonably particular,
22 it seeks testimony that can only be called legal
23 analysis.

24 As we all know, contract interpretation is a
25 question of law. There is plenty of authority out there

1 that says asking a 30(b)(6) question -- 30(b)(6) witness
2 for legal analysis is improper. Facts we're totally
3 okay with. There is no dispute that SNMP Research is
4 entitled to facts about the license.

5 So, let's take, for example, what would be
6 factual information. What products were sold containing
7 SNMP Research software which had the operating system
8 that Extreme got from Brocade? What products were sold
9 with SNMP Research software using the EXOS operating
10 system that Extreme developed? Totally factual
11 information. Plaintiffs are entitled to it. Plaintiffs
12 have got that information from the four 30(b)(6)
13 depositions that have happened.

14 Products covered under a particular license
15 agreement with SNMPR are plaintiffs' legal question. It
16 involves contract interpretation, which we cannot
17 prepare a fact witness to do, setting aside the problems
18 with particularity.

19 So the case that I mentioned, Your Honor, was
20 *Green v. Platinum Restaurants*, and that holds that the
21 timeframe limitation -- without a timeframe limitation,
22 a topic is not reasonably particular, and the Court in
23 that case set a timeframe limitation.

24 Now, I want to go back very briefly, Your
25 Honor, because that's going to come up again and again

1 in all the topics that are before you.

2 We were before the Court on December 21st when
3 Your Honor directed Extreme to put up a witness on
4 finance, put up a witness on marketing by mid June. We
5 did that. You asked us to produce the other two
6 witnesses shortly thereafter.

7 Within a month of producing our first witness
8 on finance on an MLK holiday, within a month, Extreme
9 put up all four witnesses that testified about 21 of the
10 40 topics in plaintiffs' deposition notice. These 21
11 topics covered an entire gamut of facts relevant to this
12 case; Extreme's financial information, revenues,
13 profits, sales, royalty reporting information, royalty
14 payment information, marketing and product features,
15 products containing plaintiffs' code, Extreme's source
16 code repository, Extreme's request for licenses, removal
17 of plaintiffs' offer from Extreme products. And I can
18 go on and on and describe all of the 21 topics.

19 The point that we want to make, Your Honor, is:
20 To the extent topics 2 and 3 have a factual nonlegal
21 component to it, which is reasonably particular, Extreme
22 has already provided fact testimony on these topics.

23 The residual part of not just topics 2 and 3,
24 but the Enterasys topic, No. 5, they have all this
25 information. Whatever is factual and properly allowable

1 under the law, plaintiffs have it. Everything else is
2 either not reasonably particular or calls for a legal
3 conclusion which is practically impossible to prepare a
4 fact witness on.

5 THE COURT: Okay. So you are saying that you
6 have already produced witnesses that have given factual
7 testimony to topics 2, 3 and 5?

8 MR. PRABHAKAR: Correct, Your Honor.

9 THE COURT: Okay.

10 MR. PRABHAKAR: And there has been over 20,
11 like around 24 hours of 30(b)(6) testimony. So it's not
12 a small volume to get all the facts that are relevant to
13 these topics.

14 THE COURT: Okay. Thank you.

15 MS. RICE: So, Your Honor, just to follow
16 up --

17 THE COURT: If you could first address his
18 contention that they have already produced witnesses
19 that have testified to the factual information sought in
20 topics 2, 3 and 5.

21 MS. RICE: Yes, I can. In part, although I
22 didn't attend those depositions and I haven't fully reviewed
23 the transcripts, I can tell you that we have run into
24 some problems in that context, and I will tell
25 you -- and I'm showing you here a portion of

1 Ms. Freeman's deposition. You can see -- is that coming
2 up? Here we go.

3 The question by Ms. Weber at line 6, "Was there
4 a contract that governed Extreme's royalty payment to
5 SNMP Research?" And the objection was, "Out of scope."
6 But Ms. Freeman answered, "I do not know."

7 We're getting to the heart of some of these
8 questions also in Mr. DeBacker's deposition, Your Honor.
9 I have a portion of that here, too. And this is kind
10 of --

11 THE COURT: I'm sorry; whose deposition is
12 this?

13 MS. RICE: This is Mr. DeBacker --

14 THE COURT: Okay.

15 MS. RICE: -- which was taken on February 14th.

16 And this goes back to what I said a moment ago
17 about we see e-mails in the discovery that -- where the
18 defendants are -- and Extreme were discussing the
19 licenses, the software covered by the licenses. Could
20 the license be transferred? Do they owe royalties? Do
21 they have to buy a new license? These were all business
22 discussions that were ongoing. If there was privileged
23 information, obviously there is a privilege objection
24 that can be made.

25 But you can see here in the transcript of the

1 expert, Mr. DeBacker was asked by Mr. Wood at line 18,
2 "Did you review any of the e-mails about the license
3 agreement exchanged between SNMP Research and Extreme in
4 this time period?" And the witness says, "None of
5 these, no."

6 Oh, I'm sorry. Is it not legible there?

7 THE COURT: It just wasn't pulled up enough. I
8 can see it now.

9 MS. RICE: Okay. Great. There we go.

10 So we're running into problems at depositions
11 in getting the testimony we need as relate to the --

12 THE COURT: Would you agree that some of the
13 information has been provided?

14 MS. RICE: I don't know that I can.

15 THE COURT: I've been given two examples where
16 they don't know, but he's represented -- or Extreme's
17 representing that they have covered these topics through
18 other witnesses. So --

19 MS. RICE: Well, I probably would need to defer
20 to counsel or confer with my counsel briefly who
21 actually attended the deposition and let them speak more
22 specifically to that. But we had many questions that
23 were answered with out-of-scope objections and witnesses
24 who were not prepared.

25 In fact, the witness that was there -- I

1 believe that was Mr. DeBacker who was there to talk
2 about the transfer. Under one of his topics was
3 presented the communications that related to requesting
4 the transfer, and he had not ever reviewed those
5 particular communications in preparation for the topic.
6 So --

7 THE COURT: Okay.

8 MS. RICE: -- I can only say that without
9 deferring to someone else.

10 But the best I can answer you is saying that
11 we've had a lot of trouble in answering a lot of
12 questions. In fact, the defendant has agreed to open
13 Mr. DeBacker's deposition on several topics by agreement
14 on which he was not prepared on February 14th.

15 THE COURT: Okay.

16 MS. RICE: We have not yet made that type of
17 request for Ms. Freeman, but we anticipate that we may.

18 THE COURT: Okay.

19 MS. RICE: So, in general, in getting back to
20 the argument that Mr. Prabhakar made, as to legal
21 conclusions, there is always the privilege objection to
22 be raised. But it is Extreme that indicated in response
23 to its request for admissions that it was going to rely
24 upon the Brocade license as a defense.

25 It also has indicated, if we're moving to No.

1 5, with regard to the Enterasys license, we've had the
2 changing story in this case about whether the products
3 that Extreme has been manufacturing and selling with the
4 plaintiffs' software contained in it were licensed by
5 the Enterasys license or not. So, certainly those
6 topics are relevant.

7 And if their position is that they're not going
8 to put forth any fact testimony on that, then this will
9 be a very easy prep. Beyond that, we do not believe
10 that the topic is, you know, not defined with reasonable
11 particularity, and the timing issue has never been
12 raised to us before today.

13 Certainly Extreme is limited by its own
14 experience with the various licenses. But in regards to
15 the Brocade license, which obviously was transferred
16 much later, we -- again, we do have the e-mails where
17 there is lots of discussion going on between the parties
18 about what the license entails, what was it supposed to
19 entail, can it be transferred, etcetera, and we believe
20 that it would be relevant to -- the negotiations would
21 be relevant to the relate -- the extent to which Extreme
22 is relying upon the negotiation history in order to
23 interpret the license itself.

24 So, you know, I don't know what of that they
25 obtained from Brocade, but they may have obtained that,

1 and, in our mind, that's fair game.

2 Do you have any other questions on 2 or 3? I
3 really didn't touch on 5, but I think it's very similar
4 for the reasons previously stated. If there is a
5 specific question there, I'm happy to address it.

6 THE COURT: I'm going to have another question
7 for Mr. Prabhakar because it's going to get into topic
8 6 --

9 MS. RICE: Okay.

10 THE COURT: -- which is the Enterasys license.

11 MS. RICE: Thank you, Your Honor.

12 MR. PRABHAKAR: Quick responses, Your Honor.

13 THE COURT: Okay.

14 MR. PRABHAKAR: As to the fact that the
15 witnesses didn't answer some questions, I'm sure the
16 Court hears this about every deposition that happens on
17 30(b)(6), that a witness didn't know some answers.

18 The fact is: We sent a list of disputes to the
19 Court. We showed you Ms. Freeman's transcript. The
20 Court asked for all pending discovery disputes between
21 the parties. Ms. Freeman's deposition happened mid
22 January. In the list of topics that were sent to the
23 Court, her lack of preparedness on the 30(b)(6) notice
24 is not one of them.

25 Second thing which segues to this point, if an

1 Extreme witness was unprepared on a topic that we agreed
2 to produce him on, the solution or the remedy is to come
3 before the Court, make a showing of lack of
4 preparedness. The remedy is not to ask for a
5 non-particular topic that calls for legal conclusions to
6 now be opened up because a witness's lack of
7 preparedness, if any, does not make a non-particular
8 topic particular.

9 Second point plaintiffs make is about e-mails.
10 Now, there are business e-mails. Sure, there are
11 e-mails sent from Extreme Network's account. There is
12 no denying it. But a lot of those e-mails are written
13 by people who are in engineering. How can Extreme, the
14 corporation, take a position on what an individual
15 intended in an e-mail? And the e-mails that plaintiffs
16 are talking about are e-mails from an engineer named
17 Kevin Frick, e-mails from a procurement person named
18 Fiona Nolan. And if Your Honor has seen the request for
19 additional depositions, Mr. Frick, Ms. Nolan are on that
20 list.

21 We have scheduled Mr. Frick's deposition for
22 this Friday. If they want to ask Mr. Frick what he
23 meant in an e-mail, it is fair game. They're entitled
24 to it and they get to ask it. But Extreme, the
25 corporation, how do we take a position as a company when

1 an e-mail is written by an individual? And e-mails
2 written after the fact, because if I remember correctly,
3 Mr. Frick's e-mails are about the EXOS license in the
4 2015 or '16 timeframe, or 2014 timeframe. I may be
5 missing a few years here or there. But they're within
6 the 2014, 2015 timeframe. Extreme's license was
7 negotiated in 2001. How does Mr. Frick's e-mail 13,
8 14 years after the fact inform the negotiation of the
9 license?

10 Because we can agree, and plaintiffs say in
11 their position statement, they are not asking for legal
12 testimony; they're asking for facts. How is an e-mail
13 Mr. Frick sent relevant to the negotiation of a license
14 that was negotiated before 2001?

15 So the e-mails do present a particular problem
16 in the sense that we do not know as a company what was
17 in a subject's mind when they wrote it. That's what
18 30(b)(1) depositions are for. As I said previously,
19 facts related to Extreme's products, royalty payments
20 have been covered.

21 They showed you a snippet of Ms. Freeman's
22 transcript. Ms. Freeman's deposition lasted seven
23 hours. We finished at 9 o'clock. If they did not get
24 the testimony they wanted in seven hours, it cannot
25 necessarily be Ms. Freeman's fault.

1 And we're not saying it's anybody's fault. The
2 proper remedy there -- and I'm not enlightening that
3 wrath upon me. The proper remedy there is to claim
4 Ms. Freeman was unprepared, and before this hearing,
5 plaintiffs have not made that showing.

6 So, we think, Your Honor, the factual portions
7 of 2, 3 and 5 have been covered by existing 30(b)(6)
8 witnesses.

9 You heard about contention interrogatories.
10 There is no contention against the breach of Enterasys'
11 license. There are no facts stated for the breach of
12 Enterasys' license. They have had Enterasys' code since
13 May of 2023. They have our identification of products
14 that came from Enterasys and had SNMP Research software.

15 I think around or before May of 2023, they have
16 had the install images for Enterasys' switches, which
17 you remember last time we came in November, we discussed
18 that. Since November 2023. And they have physical
19 Enterasys switches live and working with Enterasys'
20 software on them since October of 2023. We are now at
21 the end of February. There is no update to contentions
22 against Enterasys for breach of license. And even that
23 wouldn't matter because there is no amendment of the
24 Complaint to add a breach of contract claim against
25 Enterasys.

1 How is topic No. 5 then relevant when
2 voluminous document discovery, source code inspection,
3 physical machines being allowed to inspect, in fact,
4 being shipped to Knoxville, if there is still no claim?
5 How can we justify under Rule 26 that this topic is
6 burden- -- is not burdensome and disproportionate to the
7 needs of the case?

8 Depositions are a different problem, Your
9 Honor. This is not about attorneys working hard to come
10 up with a rog response or quarreling on resources of the
11 client producing hundreds of documents. This is
12 interrupting a person from his job. Which we're glad to
13 do on topics that are proper. It takes hours and hours
14 to prepare them. It takes a whole day off from work for
15 them to testify. All of that time they could be working
16 on Extreme business.

17 So, we have agreed to a very broad scope of
18 document interrogatory discovery, Your Honor. With
19 witnesses, even the standard is not just relevance, but
20 reasonable particularity and burden.

21 Without a claim against Enterasys, how do you
22 justify a burden of producing a witness on this topic
23 when witnesses have already testified about Enterasys'
24 licenses? And I'm happy to provide deposition cites if
25 Your Honor likes, but that's our position on Enterasys,

1 Your Honor. And you heard my position at length on
2 Brocade and Extreme.

3 THE COURT: Is Extreme going to invoke the
4 Enterasys license?

5 MR. PRABHAKAR: So, Your Honor, the
6 communication that plaintiff cited -- in fact, we cited
7 that in our brief. We noted expressly that we referred
8 to the Enterasys license in error. The correct license
9 is the 2001 Extreme license.

10 Now, if they claim that letter to be the hook
11 for a fact witness, plaintiffs know that that letter was
12 written by counsel, my boss, Mr. Neukom. How do we
13 provide a fact witness about that letter particularly
14 when we immediately weeks after that said that was in
15 error?

16 Now, they said that we responded to an RFA;
17 that we would rely on a Brocade license as a defense.
18 That could mean a lot of things. But that is not
19 sufficient. We could use the Brocade license with an
20 expert. But that doesn't mean that the legal
21 interpretation of the Brocade license or how we use
22 that, given that the RFA doesn't specify or ask us what
23 part of the case would you use it on, would it be fact,
24 would it be expert, and then using that small admission
25 which was served, like, long before we got to this stage

1 in discovery as a hook for depositions is -- is, quite
2 frankly, tenuous because that means that we could use
3 the Brocade license with an expert and we still don't
4 have fact testimony.

5 But that RFA is not the hook for topic No. 2.
6 Maybe that's a hook for one of the topics that we agreed
7 to produce a witness on, but certainly not No. 2.

8 THE COURT: So, as to topic No. 6, you're
9 saying that's irrelevant because you're not going to
10 invoke the Enterasys license?

11 MR. PRABHAKAR: So, topic No. 6, Your Honor, I
12 think our position is that -- let me actually show you.

13 So, topic 6, analysis and communications
14 relating to which products are encompassed by the
15 license. Legal question. Topic No. 7, your analyses
16 and communications, internal or external, relating to
17 products that contain or might contain SNMP Research
18 software. Topic No. 7 is not red.

19 Extreme's designee on topic No. 7,
20 Mr. Fitzgerald provided 20 pages' worth of testimony
21 lasting 37 minutes talking about Enterasys' products and
22 the search he conducted for finding those products.
23 There is nothing left which is factual on topic 6 that
24 plaintiffs are entitled to at this point because they
25 already got that through topic 7 because that's not

1 limited by license; that's just limited by products that
2 contain the software.

3 THE COURT: Thank you.

4 MS. RICE: So, just to respond briefly, Your
5 Honor, we have over 20 years of use of our client's
6 product with no payment, and their defense is the 2001
7 Extreme license.

8 Extreme has produced Enterasys' products that
9 contain SNMP Research software in it, and their defense
10 to any infringement would be the Enterasys license. So
11 we do need to explore. If they are not going to have
12 any factual testimony and they're going to rely on
13 experts, then this becomes very simple. But they have
14 not been willing to say that to us.

15 With regards to e-mails, we do not have any
16 e-mails from the defendant regarding the negotiations of
17 the 2001 Extreme license, and we have a right to explore
18 Extreme's position and its view because this is their
19 defense. This goes to the heart of their defense.

20 And to tell us that we can only explore this
21 through percipient witnesses rather than a corporate
22 representation of their understanding and position with
23 regards to these issues is inappropriate in our view.

24 I did want to touch just briefly on
25 Ms. Freeman. First of all, yes, the deposition did

1 happen over the holiday in January. We are still
2 reviewing that transcript. It was a very long
3 deposition, in part, because Extreme requested to start
4 late; in part, because we had lengthy disputes during
5 the deposition about speaking objections. Ultimately
6 towards the end of the day we reached a compromise on
7 speaking objections and things have gone smoothly in
8 subsequent depositions. And, then, also, Extreme's
9 counsel prepared for over an hour for redirect. So it
10 was a long day, but it wasn't all on us and it wasn't
11 all substance.

12 So, we believe that 2 and 3 and 5 and 6 are all
13 highly relevant to our case, highly relevant to the
14 defendant's defenses and its position in this case, and
15 we believe we're entitled to the corporate position on
16 these topics.

17 THE COURT: Thank you.

18 All right. If we can go to topics 10 and 11.
19 And, Mr. Prabhakar, I saw a notation that these claims
20 will be covered by experts. It may make it easier if
21 that's the case. Are you going to be relying on experts
22 for topics 10 and 11?

23 MR. PRABHAKAR: Give me one second, Your Honor.

24 THE COURT: Certainly.

25 MR. PRABHAKAR: So, again, I'll go back to

1 divvying up this topic into factual and expert opinion
2 and then show why the factual part is not reasonably
3 particular, and whatever is left after that is --

4 THE COURT: So you're saying it needs to be
5 answered with both factual and expert opinion, not just
6 solely expert opinion?

7 MR. PRABHAKAR: There may be a factual
8 component to it. We have not figured out what that
9 could be for two reasons. First of all, it says all
10 agreements you believe are comparable to the Brocade
11 license. So a factual question would be all agreements
12 because comparability, which I'll get to, is going to
13 require expert analysis. And, as stated, comparability
14 is vague. And I'll explain why, too, in a moment.

15 Does "all agreements" refer to all agreements
16 that Extreme knows of? Does it refer to all agreements
17 produced in this case? Does it refer to all agreements
18 that exist out in the market? We don't know.

19 Plaintiffs claim in their position papers that
20 it is only limited to topics, but it is only limited to
21 agreements that Extreme considers comparable, and that
22 should potentially be a smaller or some well-defined
23 universe that Extreme knows of.

24 Assuming that is true, any attorney who is
25 deposing a witness who testifies, I think license A is

1 comparable to the Brocade license or the Extreme
2 license, my next follow-up question would be, Why is it
3 not compared to license Y? And that is testimony that
4 they're entitled to because that's what goes to the
5 heart of it; what are the grounds for comparability?

6 Therefore, even saying that this topic is
7 limited to agreements that Extreme believes are
8 comparable, setting aside the fact that comparability is
9 not defined in a factual sense, that's the problem with
10 reasonable particularity.

11 Another practical issue is: Let's say this is
12 limited to licenses SNMP Research produced in this case.
13 Many of those licenses nobody in Extreme has factual
14 knowledge of because they're SNMP Research's or SNMPRI'S
15 licenses. Many of them are marked highly confidential.
16 Many of them are marked attorneys' eyes only.

17 Even if I could prepare a witness by showing
18 them a license so they can go to the deposition and
19 testify about all agreements they have seen, I can't
20 show them all of them.

21 So, practically speaking, it is impossible to
22 prepare a witness and impart them encyclopedic knowledge
23 about over a thousand licenses which plaintiffs' counsel
24 emphasized in the discovery disputes that they have
25 produced.

1 Which takes us to the issue of comparability.
2 Factually speaking, from a layperson witness, what is
3 the meaning of comparability? Is it economically
4 comparable; the royalty rates are the same? Is it
5 technically comparable because it relates to the same
6 operating system, relates to the same CPU architecture?
7 Or is it comparable in terms of the scope of the
8 license; it covers one product; it covers ten products?
9 Reading topics 10 and 11, we cannot determine that.

10 SNMP Research says in its position statement
11 that Extreme should know what this term means because
12 they used it in its briefing to the Court. Fair point.
13 It was briefed in the context of a discovery dispute.

14 As hopefully a knowledgeable attorney, I may
15 know what comparability means from a legal sense. I
16 can't impart that legal knowledge to a fact witness.
17 But even then, the first sentence of the first page,
18 plaintiffs' cite in that discovery order or brief reads,
19 "Damages experts, courts and juries consider comparable
20 licenses in determining a reasonable licensing fee or
21 license fee." That's the expert part of it.

22 So, I want to be clear, Your Honor, that to the
23 extent that there is any factual component to topics 10
24 and 11, it is impossible to prepare a witness. To the
25 extent it requires a comparability analysis, that comes

1 through expert testimony.

2 And my co-counsel, Mr. Lee, just warned me that
3 you didn't answer Your Honor's question about the
4 Enterasys license. I don't want to play a game of not
5 answering your question directly that will you provide
6 factual testimony on comparability. I think on the
7 Enterasys license, I want to answer more expressly that
8 in the follow-up letter, we stated we're not relying on
9 the Enterasys license; it's the Extreme license that
10 covers these products. So, I do not want Your Honor to
11 think I was being evasive.

12 THE COURT: Thank you.

13 MR. PRABHAKAR: Here, based on such
14 poorly-written topics, I think it is unfair to ask
15 Extreme -- and I don't mean any disrespect, Your
16 Honor -- just reading these topics, Extreme should not
17 be put in this spot that it receives overly-broad topics
18 which then forces it, without having taken any
19 deposition of the plaintiffs, without knowing anything
20 about the completeness of their license production, to
21 say, yes, we don't have fact testimony to offer.

22 I do want to answer Your Honor's question
23 directly. I just don't think that these topics -- and
24 not just 10 and 11. There are other topics that relate
25 to expert testimony which puts us in the same bind.

1 We should not be forced to take that position
2 unless there was a topic that was reasonably particular,
3 which Your Honor finds reasonably particular and Extreme
4 says, this is all expert. Then it would be a fair
5 question to ask Extreme to take a position or shut up.
6 But this, these two, 9 and 10, are not those topics. 15
7 and 17, which we will get to shortly, are also not those
8 topics.

9 So, I apologize, Your Honor, that I'm not
10 answering your question directly. But I just think it's
11 unfair that in response to these topics, I should be
12 asked -- or Extreme should be asked to answer that
13 question.

14 THE COURT: Is your position going to be the
15 same with topics 15 and 17 because -- that they're not
16 reasonably particular for a fact witness?

17 MR. PRABHAKAR: No, Your Honor.

18 THE COURT: Okay.

19 MR. PRABHAKAR: And I'll explain why.

20 THE COURT: Okay.

21 MR. PRABHAKAR: So, let's start with -- so,
22 generally speaking, topics 15 and 17 -- I apologize --
23 relate to apportionment, profits attributable to factors
24 other than the copyrighted work. It cites to the
25 statute. The value of SNMP Research software.

1 Let's start with 15. Let's read the first
2 sentence. "All revenues, costs and profits from the
3 sale of the products identified in Extreme's responses
4 to SNMP Research in its Interrogatories Nos. 1, 2 and
5 9."

6 This is the factual portion of this topic. The
7 complete basis has reasonable particularity problems
8 that I'll get to and expert problems, but let's parse
9 the first sentence.

10 And I have to go two pages back because that's
11 how long topic 14 is. So, let's read it. "Revenues,
12 costs and profits from the sale of the products
13 identified in Extreme's responses to SNMP Research,
14 Inc.'s Interrogatories Nos. 1, 2 and 9."

15 On the next page, the factual portion of these
16 two topics is identical. Topic 14 I present was not
17 flagged right because Ms. Freeman testified on this
18 topic. So, the factual portion of 15, they already
19 have -- plaintiffs already have testimony about.

20 THE COURT: Was she able to answer completely?

21 MR. PRABHAKAR: Your Honor, our position is,
22 yes, she was. And certainly plaintiffs haven't, in the
23 list of disputes, raised Ms. Freeman's deposition that
24 has happened over 45, maybe 30 days. I'm not trying to
25 exaggerate. Just being bad with math.

1 So, that leaves us to the second part. And, in
2 fact, I want to note one thing from plaintiffs' position
3 papers, that they actually said that they do not want
4 expert analysis on this. They want three facts from 15
5 and 17; competitive intelligence, the importance of
6 certain features, and Extreme's profits from certain
7 products. We just covered C. And I just showed you
8 that 14 and 15 are virtually identical.

9 That leaves us to complete basis. It's
10 Extreme's position that complete basis is not reasonably
11 particular. And let's look at the definition of
12 "complete basis" to show what's wrong with it.

13 Complete basis means identity and comprehensive
14 description of factual basis, including the identity of
15 all persons with knowledge of factual basis, identity of
16 all evidence, including documents, by production number,
17 oral statements, and witnesses that relate to it.

18 There are two problems with this definition
19 which are incorporated in 15 and 17. It is impossible,
20 given the timeframe at issue in this case, given the
21 number of products at issue in this case, given the size
22 of the operating system in this case, millions of
23 clients, to prepare a witness with all factual basis,
24 all evidence. I don't even know how I would make a
25 witness memorize production numbers or oral statements.

1 But then comes the second part of it. Because
2 of the unique nature of 30(b)(6) testimony, SNMP,
3 plaintiffs would argue if there is a complete basis that
4 a 30(b)(6) witness did not provide, Extreme should be
5 precluded from using that at trial. But a complete
6 basis on apportionment, on the value of the software,
7 profits attributable to other features of the products
8 may actually come from third parties.

9 We've asked for the Avaya/Nortel documents. It
10 may actually come from plaintiffs. How can I prepare an
11 Extreme witness to provide a complete basis when the
12 complete basis resides outside of Extreme?

13 And which will bring us to the next logical
14 question. So what about facts that Extreme does know
15 of? I pointed you to what plaintiffs wrote in their
16 statement about they need three things; competitive
17 intelligence, importance of certain features, and
18 profits, which we just covered.

19 So let's talk about competitive intelligence
20 and importance of certain features. Topic No. 13, which
21 is not red, we designated Mr. Ajmera as our 30(b)(6) on
22 it.

23 Let's look at topic C, subpart (c). And, Your
24 Honor, this is the breadth of this topic, yet to advance
25 30(b)(6) depositions, we agreed to produce a witness on

1 this. But C reads which features character six customer
2 needs are emphasized were targeted in any marketing. E
3 reads information about competing products, competitive
4 intelligence that they asked for. F and G read talking
5 points, messaging Extreme sales and marketing staff used
6 to communicate with customers, information about
7 clarity, points of clarity and difference.

8 I can go on on this topic, Your Honor, but C,
9 E, F, and G relate to the three things plaintiff put in
10 their position statement that they need from topics 15
11 and 17, which Extreme admits are factual information
12 they're entitled to, and they got it from the deposition
13 of Extreme's marketing witness, Mr. Ajmera, who is also
14 not on the name of witnesses I've prepared. His
15 deposition is closed.

16 So the facts that are relevant to 15 and 17 are
17 now in possession of plaintiffs through Extreme's
18 30(b)(6) witnesses.

19 The left-door application of those facts to
20 come up with an apportionment number or to value SNMP
21 Research software in our products, that I can answer
22 definitively is expert testimony, and not only Extreme's
23 experts, but plaintiffs' experts would provide opinion
24 on that.

25 So, once again, 15, 17, the factual component,

1 plaintiffs already have the testimony. Complete basis,
2 not reasonably particular. Profits attributable, value
3 of the software, expert opinion. There is nothing else
4 that Extreme can provide on these two topics.

5 THE COURT: Thank you.

6 MS. RICE: So, first I'll touch on 10 and 11,
7 Your Honor. They complain about all agreements being
8 too broad was never -- or unspecific was never raised
9 during the meet and confers. But we have told Extreme
10 repeatedly and it's in our position statement that we're
11 just looking for the agreements that Extreme wants to
12 rely upon, the ones that it believes are comparable.

13 And, so, that is a descriptor Extreme has used,
14 and if they're not going to have any factual testimony
15 regarding that, then it may be a moot issue. But if
16 they do intend to have factual testimony regarding it,
17 we just would like the opportunity to explore whatever
18 it is they're going to rely on that they believe is
19 comparable.

20 With regards to 15 and 17, and maybe to some
21 extent -- I think this was largely 15 and 17. And I
22 could be mistaken. It may have been also raised with
23 regards to 10 and 11. This argument of duplicative
24 topics, that also was never raised during our
25 conferrals, Your Honor.

1 So, with regard to 15, 15 is related to the --
2 those revenues, profits and costs -- revenues, costs and
3 profits from the sale of products. So it is about the
4 same financial dollars in 14. But 15 is different
5 because it is specifically relating to what portions of
6 those revenues, costs and profits is attributable to
7 factors other than the copyrighted work. So we're
8 trying to parse out in 14, you know, what is your profit
9 on these -- on these products and how do you track it?
10 What is your sales? What is your revenue? What is your
11 cost, your margin, etcetera?

12 And then in 15, it's a totally different topic
13 which is about what portion of that relates to the
14 copyrighted work and what portion of that is their
15 position does not relate to or is not attributable to
16 the copyrighted work?

17 Your Honor, we do not have any testimony on
18 profits attributable from the 30(b)(6) witnesses taken
19 thus far, or on value, which is, I believe, topic 17.

20 And as you heard Mr. Prabhakar say when we were
21 discussing some other discovery earlier today, the
22 importance of competitive information and the
23 importance -- their desire to know what SNMP thinks are
24 the value of its product. Well, SNMP, the plaintiffs,
25 also want to understand what is it that Extreme thinks

1 is valuable about SNMP's products. Why is it, for
2 example, that their engineers left our client's
3 networking solution in their products for so many years
4 rather than subbing it out for a free version or what
5 have you?

6 So value is not only about monetary value or an
7 expert calculation of value; it's also about importance,
8 and it's a topic that they have recognized before you
9 today is very critical to the case, and for both
10 parties.

11 As to the complete basis, Your Honor, we
12 understood in our conferrals that by removing the words
13 "legal basis," we had resolved the complete basis
14 objection. Again, we've told them this is not a memory
15 test, but we are entitled to their position and what we
16 expect to hear from them at trial. So, we do believe
17 it's -- they're reasonably capable of preparing a
18 witness as to the topics and the facts they're going to
19 rely upon at trial.

20 And then No. 17 does not use the term "complete
21 basis." So, I think that we're only dealing with that
22 with regard to 15.

23 You were also directed to topic 13 as being
24 duplicative. But, again, as relates to 17, we believe
25 those are two very different topics; one being how do

1 they market the topic and to whom, etcetera, and what
2 they may say about their product to their customers, but
3 that may be very different or have overlap with but be
4 somewhat different than what they internally believe are
5 the value of our client's software within their product.

6 So, we believe these topics are relevant; that
7 they have not yet been covered by depositions that have
8 been given to date, and to the extent that there is
9 going to be factual testimony, we would like the
10 opportunity to question Extreme about this.

11 THE COURT: Thank you.

12 Do you all need a moment? We can take a short
13 break before we move to topic 18.

14 MR. PRABHAKAR: I'll take probably less than a
15 minute, Your Honor, if I may.

16 THE COURT: Okay.

17 MR. PRABHAKAR: Counsel said we didn't inform
18 them in meet and confers about overlap between the
19 topics. We did.

20 Now, I don't have an audio recording of the
21 meet and confers, but this is the written record that we
22 cited. Topic 17, the factual information relevant to
23 this topic overlaps with topic 13. I said the exact
24 same thing to you just now. So, we did discuss this in
25 meet and confers, and this is at least one written

1 record of it, Your Honor. Thank you.

2 THE COURT: Okay. All right. Are you ready
3 for -- to address topic 18?

4 MR. PRABHAKAR: Your Honor, one brief second.

5 Your Honor, this was topic 18 as served,
6 "Seeking company-level financial information from 2001
7 to the present." 23 years. "Without limitation, the
8 identity of the process of preparing periodic financial
9 statements, balance sheets, income statements, cash
10 flow, profits, standards, and methods used by Extreme's
11 accounting system." I don't want to read the whole
12 thing, but this is how it started.

13 I mentioned the *Green* case, Your Honor, which
14 says some temporal limitation is necessary for
15 reasonable particularity.

16 I do not know how to prepare a witness to talk
17 about complete-level financials for 23 years with where
18 we started on this topic. And then in a purported
19 narrowing of this topic, I can't even fit the entire
20 e-mail on the document camera, but I can represent to
21 you that this has at least eight bullet points, main
22 bullet points, and ten sub items underneath it.

23 So, I don't know if this was the narrowing that
24 plaintiffs had in mind. We view it as an expansion.
25 And they didn't claim that even this narrowing was

1 complete. They should not be deemed exclusive, and we
2 must send a few additional categories prior to the
3 deposition.

4 So we have a serious problem, first, of
5 overbreadth, lack of a timeframe, and our inability to
6 prepare a witness to have encyclopedic memory about
7 23 years of company-level financials.

8 The other problem, Your Honor, is a vast
9 majority of this information is irrelevant. The
10 company-level financials cover information or covers
11 products that are not at all in dispute in this case.
12 The products in dispute in this case are wired products.
13 These are products where you actually take a physical
14 cable, plug it in a switch. As we all know, the world's
15 going wireless. You don't have to connect cables to
16 anything on our phones and our laptops. Extreme has a
17 vast majority of wireless products.

18 The company-level financials have all of that
19 information as well. Not only is it irrelevant, how do
20 we prepare a witness in this litigation which has
21 nothing to do with wireless access points to understand
22 and learn about the financials related to products that
23 are not at issue?

24 Now, this topic also called for our SEC
25 statements. Those were out of scope, but that did not

1 stop plaintiffs from questioning Extreme's finance
2 witness about Extreme's 10-K statements.

3 She answered to the best of her knowledge. She
4 was certainly not designated on that. And plaintiffs
5 knew topic 18 is in dispute, and yet they burned
6 valuable time with the witness knowing that Your Honor
7 is going to hear this dispute asking those out-of-scope
8 questions.

9 Extreme had an impossible choice that we either
10 prevent that line of questioning, lest they shoehorn it
11 into a topic that we agreed to then prepare the witness
12 on and then risk being brought in front of this Court
13 saying the witness was unprepared.

14 But knowing that 10-Ks were a topic in dispute
15 did not prevent plaintiffs from asking questions about
16 it. They got some testimony, whatever the witness deals
17 with in her personal capacity. But this topic, as
18 written and as redefined, is not reasonably particular,
19 isn't relevant, for the most part, and, therefore, we do
20 not think that we can prepare a witness or we should be
21 required to prepare a witness to the scope of this
22 topic, particularly when they already have seven hours
23 of financial testimony from a 30(b)(6) witness.

24 THE COURT: Thank you. Okay. Ms. Rice, on
25 these particular documents, would a document request be

1 appropriate?

2 MS. RICE: Well, we have -- for 18 in
3 particular?

4 THE COURT: Yes.

5 MS. RICE: We have certain documents, and we
6 have been able to question a witness on some of the
7 financial documents. But that witness also testified
8 that the way that Extreme keeps its internal numbers
9 differs from the 10-K. And we believe we need to
10 understand how their 10-K -- or their audited
11 financials, etcetera. And, so, we need to -- for our
12 experts to be able to understand how it differs so that
13 we can know which one is right or wrong in certain
14 cases.

15 Obviously there is probably many things on
16 their financials that aren't necessarily relevant, but
17 overall, we need to have an understanding of how the
18 10-Ks fit together with the information that we've
19 already been provided and --

20 THE COURT: Well, based on what you've
21 already -- what you've already been provided, can you
22 narrow the -- this topic as it currently stands?

23 MS. RICE: Well, let me -- let me check with my
24 counsel for a moment.

25 THE COURT: Sure.

1 MS. RICE: Yeah, unfortunately, I don't think
2 we can do that, Your Honor. I think what we have tried
3 to do, though, is, by the e-mail that Mr. Prabhakar
4 shared with the Court a moment ago -- I believe it's in
5 the papers -- we tried to give them some guidelines of
6 what we -- of how to prepare a witness because they said
7 they didn't have enough specificity. And, so --

8 THE COURT: That was the same thing as you had
9 attached as Exhibit E --

10 MS. RICE: Yes.

11 THE COURT: -- correct, to the joint statement?

12 MS. RICE: Correct, correct. So, we tried to
13 give them some -- they asked for specificity on how
14 would they prepare a witness. So we tried to provide
15 some more detail. But, then again, Extreme complains
16 that this is too specific, or, you know, also we may not
17 want to be fully limited to this e-mail.

18 Extreme has identified financial information as
19 recorded in its SEC filings in its sworn response to one
20 of our key financial interrogatories, Your Honor. And,
21 so, we do believe we should be able to inquire about
22 those SEC filings since they have relied upon them in
23 their own discovery responses.

24 And, again, we have told them it's not a memory
25 test. But we try to give some guidelines of the areas

1 we're looking at through conferrals and through the
2 e-mail and everything.

3 THE COURT: Okay. I'd like to go on and cover
4 in a group the topics 19, 20, 27 through 20- -- through
5 30.

6 I want to ask: Mr. Prabhakar, now that Extreme
7 has responded to the Complaint, does it change anything?
8 I'll ask this of both parties, but --

9 MR. PRABHAKAR: I think, Your Honor, what it
10 changes is: At least now there is an understanding of
11 what the affirmative defenses are in response to 19.
12 There are 15 of them.

13 In Exhibit C that we cited to our brief, and
14 we -- we agree that that's not binding authority, but
15 it's guidance from other district judges who have seen
16 issues with 30(b)(6) topics, and all affirmative -- all
17 facts or complete basis for affirmative defense was
18 topic No. 1 on that list of topics that are considered
19 problematic.

20 There are 15 defenses that range from copyright
21 issues, problems with the registration, equitable
22 defenses, and then licensing defenses.

23 It is not reasonably particular as stated, as
24 catchall, to just assert this topic in a case that
25 plaintiffs have repeatedly characterized as complex and

1 which Extreme in the context of burdensome discovery has
2 described as complex.

3 If the case, as plaintiffs claim, is complex,
4 how is 19 -- how can they explain 19 to be reasonably
5 particular as one topic for one witness to testify about
6 15 affirmative defenses?

7 So, while now we know what the universe of
8 defenses is, even with that universe, preparing a
9 witness on this topic is problematic. That is not to
10 say that facts related to some of these defenses have
11 not been obtained by 30(b)(6) testimony.

12 But it's -- I completely understand, Your
13 Honor, because if I was on the other side, I would say,
14 well, how do I know which fact relates to which
15 affirmative defense? That's a very fair point. If
16 somebody would have told me, I would have made the same
17 point.

18 The answer to that is a contention
19 interrogatory. This is one of those topics, Your Honor,
20 where I think it is proper, both in terms of timing and
21 for the Court to manage discovery in this case to say,
22 this is a topic better suited for a contention
23 interrogatory rather than a 30(b)(6) topic now that the
24 answer has been entered in this case. And the *Adkison*
25 case from this Court notes in context of contention

1 topics that it may be more efficient and manageable to
2 provide that answer through contention interrogatories.
3 So, that's at least our position, Your Honor, on 19.

4 Would you like me to address the remaining
5 group of contention topics?

6 THE COURT: Uh-huh. Certainly.

7 MR. PRABHAKAR: Thank you, Your Honor. Not
8 only on 19, but 20, 27 to 30, all ask for legal
9 contentions. There are multiple cases that have held
10 that 30(b)(6) topics are not designed to discover
11 contentions or legal theories.

12 Those cases are good law for three reasons.
13 Legal contentions are prepared by lawyers who have the
14 unique knowledge to apply the facts to the case. It is
15 impossible to prepare a witness to first learn all the
16 facts. And as we discussed in the context of an earlier
17 topic, all the facts, because of the complete basis
18 issue with these topics, some of the facts may be -- may
19 not be in the first instance with -- be with Extreme.
20 So, there is the first challenge about providing the
21 witness all of the facts and then a lawyer trying to
22 teach how the facts apply to the law.

23 Now, if that's not ringing alarm bells of work
24 product, it is at least ringing alarm bells of the
25 witness's ability to comprehend information that we, as

1 attorneys, learned from three years in law school and
2 then learned our -- you know, then spent our lifetimes
3 trying to perfect. There is a reason why the law says
4 exploring legal contentions and theories is improper for
5 30(b)(6) topics.

6 So that leads to the factual information
7 related to topic 20 which talks about unenforceability.
8 But I think more prominently for 27, 28, 29, and 30,
9 which is copyright infringement; why did we breach the
10 license, commit fraud, basis for why SNMP Research
11 should have known that Extreme was using SNMP Research
12 software.

13 A lot of the facts that Extreme knows as a
14 corporation which I described earlier which apply to
15 these contentions have been developed using the existing
16 30(b)(6) witnesses. And that's where the complete basis
17 is a trap because, in some sense, we are limited to
18 factual information that plaintiffs' attorneys elicit.
19 So, if they didn't elicit some factual information that
20 was relevant to this in a deposition, that should not be
21 used to preclude Extreme from presenting that complete
22 basis. That's another reason why a contention
23 interrogatory for this is proper.

24 Topic 30, we have answered at great length an
25 interrogatory which talks about why SNMP Research should

1 have known that Extreme was using SNMP Research
2 software. They have that answer. In fact, plaintiffs
3 used that answer to that interrogatory with one of our
4 witnesses who was offered as a designee on document
5 collection.

6 For why we didn't commit fraud, again, facts,
7 e-mails have been put in front of Extreme's 30(b)(6)
8 deponents, and they have answered to the best of their
9 ability why we didn't breach the 2001 Extreme license.

10 Setting aside the legal aspect of breach, the
11 factual aspects. What are the products? What's inside
12 them? What's the software? Has the software been
13 replaced? When has it been replaced? There are
14 documents that talk about what operating system each
15 product runs on. What's the hardware? Because all of
16 that is part of the license.

17 All those facts, either through 30(b)(6)
18 deposition testimony or document testimony or contention
19 interrogatory responses, are in possession of
20 plaintiffs. To now reinvent the wheel after having
21 taken 24 hours of 30(b)(6) testimony, I think, is not
22 only duplicative, but, as stated on these topics, is
23 improper.

24 Anything else?

25 THE COURT: Thank you.

1 MS. RICE: I think I can be very short here,
2 Your Honor. With regard to topics 19, 20 and 27 through
3 30, we're asking -- I think you asked Mr. Prabhakar
4 first, now that we have the answer and we have the
5 affirmative defenses, does that change anything and for
6 us to just set out what the waterfront is, and, for us,
7 we have told Extreme that what we're looking for is the
8 factual basis for their contentions.

9 So, some of their -- one of their affirmative
10 defenses is failure to state a claim. I don't think
11 we're going to be asking about that in a 30(b)(6)
12 deposition. But certainly some of the other defenses,
13 the validity of the copyright or the validity of the
14 registration, to the extent there are factual positions
15 that Extreme has that relate to that defense, we believe
16 we're entitled to discover that. So, for all of these
17 topics, Your Honor, we are simply asking for the facts
18 that Extreme intends to rely upon.

19 There was reference to asking interrogatories,
20 and in some cases there have been some interrogatories
21 asked, and in the depositions that have occurred to
22 date, when we have tried to ask about the rogs, those
23 were objected to as out of the scope.

24 So we haven't been able to really test that in
25 deposition. But for these, not only is there case law

1 in this district that says that a party may seek the
2 factual basis of another party's claims or defenses by
3 Rule 30(b)(6) deposition. But, also, with regard to
4 these claim topics, such as 29 and 30, Your Honor, this
5 is a fraud case, and even if there are written responses
6 that address -- or e-mails or what have you that address
7 some of the facts that the defendant is relying upon,
8 the plaintiff should be entitled to test those facts in
9 deposition in a fraud situation.

10 So, we believe that these are proper topics,
11 and we would ask the Court to allow us to proceed with
12 them.

13 Anything else?

14 THE COURT: Thank you. As we get to --
15 actually, Ms. Rice, if you're going to address 32, I did
16 want to ask you a question first.

17 MS. RICE: Sure.

18 THE COURT: Oh. Just at first blush, this did
19 seem very broad, and, so, I just -- I want to try to
20 understand exactly what plaintiffs really need --

21 MS. RICE: Okay.

22 THE COURT: -- in relation to this.

23 MS. RICE: Well, what we were trying to
24 understand with topic 32 is what has the defendant done
25 with plaintiffs' code. This impacts our copyright claim

1 given that every act of reproduction or preparation of a
2 derivative work or distribution is alleged to be
3 infringement and the breach of contract claim because
4 obviously the contract, we allege, would limit to use to
5 certain circumstances.

6 So we provided some detailed categories here.
7 This is really just as a guide, again, to help Extreme
8 prepare its witness, not as a limitation on the topic.
9 Obviously the topic is already limited to code
10 containing our client's software, and during the
11 meet-and-confer calls we had, Extreme continued that if
12 this topic was going to require testimony about the
13 specific content of the code, it was improper.

14 And we confirmed that we were not trying to
15 address the content of the code; what we're really
16 trying to figure out here is what is -- what are
17 Extreme's customs and practices corporately for handling
18 its highly confidential source code, including the code
19 that our client -- of our client that it has in its
20 possession, and that we believe that it has version
21 histories and commit logs which show who accessed the
22 code, why they accessed the code, when they accessed the
23 code, and what they did with the code. So we think that
24 they have a roadmap for preparing a witness on the
25 factual aspects of this that should not be really

1 burdensome by using their commit logs and their
2 versioning history.

3 THE COURT: Okay.

4 MS. RICE: Anything else I can answer about
5 that?

6 THE COURT: I don't think so.

7 MS. RICE: Okay. Thank you.

8 THE COURT: That's fine. Thank you.

9 Sorry, Mr. Prabhakar. I took that out of turn
10 because I wanted to go ahead and ask while she was --

11 MR. PRABHAKAR: Not at all, Your Honor. You
12 can take in whatever order you want them to.

13 A couple points. The first main point, which
14 is this notion that all these subparts to a topic are a
15 guide to preparation. They may, in the expectation of
16 getting a witness, be a guide. But not only do they add
17 to the breadth of the topic, because topic 32 reads,
18 "this includes, without limitation," and this is almost
19 established law that a topic that says "without
20 limitation" is not reasonably particular.

21 But let's parse this topic a little finer. If
22 we ignore the part that includes "without limitation,"
23 source -- "possession, custody of every copy, including,
24 without limitation, every identical copy of source code
25 containing SNMP Research software." This is not a

1 question about SNMP Research software code in Extreme's
2 products; it's about source code that contains
3 plaintiffs' software.

4 To say that plaintiffs' software code is a drop
5 in the bucket if the bucket presents Extreme's operating
6 system code is not an exaggeration.

7 So, we have plaintiffs' software code as a
8 portion of millions of millions of lines of code that
9 Extreme's operating system has because, keep in mind,
10 these are networking products. They comply if we're
11 just talking about standards. They comply with at least
12 100 of them because that's how the networking business
13 is. Because if there aren't any standards, these
14 different equipments cannot talk to each other. Then,
15 on top of that, there is Extreme's IT to make doing
16 switching better, faster, independent of the source
17 code.

18 So, the topic doesn't limit this to whatever
19 plaintiff just described about derivative works from
20 SNMP Research software, code comments, what happened
21 with it; it is asking about all the source code, and
22 there are at least a thousand versions that we have
23 produced spanning 23 years.

24 These sub-bullets are not guides for
25 preparation. There is no way we can impart all this

1 wisdom into one witness. And plaintiffs' counsel said,
2 wait, there are check-in logs in source code that shows
3 who checks it out. What did they do with it? This is
4 23 years of source code development. How do we get a
5 witness, given that there is no narrowing even to the
6 source code check-in logs to plaintiffs' source code,
7 which is really the source code that is at issue in this
8 case, without that limitation? How do we have our
9 witness pouring over 23 years and a thousand different
10 releases of the software to prepare for this topic? And
11 even if it is for plaintiffs' software, how do we
12 prepare them to cram up everything?

13 And this is a memorization exercise. Because
14 what a check-in log represents, Your Honor, is a
15 developer would modify the code, and the check-in
16 process is, like, he's developing this on his local
17 computer, and then once he thinks that it's ready to go
18 into the product that's shipped to the customers or to
19 the QA team, he would check that in and now it's part of
20 the prod's code.

21 Engineers, software engineers, do this every
22 day. That's their day-to-day job. The check-in comment
23 would typically contain the name of the developer, the
24 date of the check-in, and if the developer was a good
25 one, would explain what his change was. There are

1 hundreds of developers of Extreme's software code. I
2 have not looked at the check-in log, but if I have to
3 prepare a witness for this topic, I would be really
4 concerned that how much volume of information am I going
5 to show the witness? When was the source code first
6 copied, created, obtained? How does the witness
7 memorize this for a thousand versions of source code?

8 So, as stated, even with this notion that
9 plaintiffs have that somehow the subparts impart more
10 reasonable particularity, even though they're using the
11 "including, without limitation" language, we disagree.
12 They actually make our life much harder because if we
13 miss one subpart because it's too burdensome and we
14 agree to produce a witness, we run the risk of being
15 accused that you were unprepared on this entire topic
16 because after five subparts, the witness didn't know
17 about subpart 2.

18 So, Your Honor's first reaction was right.
19 This topic is overbroad as stated. And the source code
20 that's at issue is being examined by expert witnesses.
21 They can testify to everything; if not everything, most
22 of the source code issues that are called for by this
23 topic.

24 To the extent there is factual information that
25 plaintiffs need, they could have fashioned a narrower

1 topic which would call for that information, but they
2 did not. And now that we have taken multiple 30(b)(6)
3 depositions and we have already designated a witness who
4 talked about source code repositories, now is not the
5 time to go back and try to fix a problem which we
6 flagged to plaintiffs in the first place during the meet
7 and confers. And plaintiffs' counsel said, we want to
8 know everything that you did with plaintiffs' source
9 code. That's just the definition of not reasonably
10 particular, and that's why topic 32 is improper, Your
11 Honor.

12 THE COURT: Okay.

13 MS. RICE: So, Your Honor, Exhibit A to the
14 position statement has the correct version. What
15 Mr. Prabhakar showed you is not quite correct.
16 We -- and I'll put it up here.

17 We did remove the "without limitation" language
18 that he was referencing. So, if that helps clarify that
19 piece of this topic.

20 This is a complex case, Your Honor, and what we
21 heard earlier today was that on license agreement,
22 30 years' worth of plaintiffs' license agreement wasn't
23 enough; that the defendant needed to see 38 years of
24 license agreements. But the defendant has had
25 plaintiffs' code for 21 or 23 years now in its custody

1 and who it's allowed to have possession of and how it
2 has used our code, our client's code, is equally
3 relevant, Your Honor.

4 With regard to the comment about the repository
5 expert -- or the designee on repositories -- excuse
6 me -- we still need to understand what the names of the
7 repositories are where the code is held.

8 This is really about corporate practice, Your
9 Honor. Most of the versions of defendant's source code
10 that contains the plaintiffs' software should be treated
11 relatively similarly, we would expect, and, so, this may
12 not be, in our view, as burdensome as it's being made
13 out to be.

14 Also I wanted to point out to the Court -- I'm
15 sorry. I lost my note. Thank you. Excuse me. I'm
16 sorry. That -- sorry. I'm sorry. I've completely lost
17 my thought and I can't find that comment.

18 So, I guess I would just say that we believe
19 this is not as monumental a task as the defendant is
20 making it out to be. It's certainly -- the case spans a
21 number of years, and the handling and use of our
22 client's code is relevant.

23 And, so, we would ask that the defendant be
24 ordered to prepare a witness to testify to what's
25 reasonably appropriate for a witness to be able to know

1 under these circumstances based on the documents
2 that -- and information and witnesses that employees
3 that Extreme has available to it.

4 THE COURT: Okay. Ms. Rice, before you sit
5 down --

6 MS. RICE: Uh-huh.

7 THE COURT: -- do you have your materials to
8 address topic 37?

9 MS. RICE: I do, yes.

10 THE COURT: So, I do want to ask your position
11 on the relevancy of the --

12 MS. RICE: Sure.

13 THE COURT: -- management information base.

14 MS. RICE: I'm glad you asked that. So,
15 management-based information documents are -- they're
16 basically documents that define what can be queried in
17 the network and generally what kind of variables or
18 parameters can be monitored using SNMP.

19 So, there are manage -- they're referred to as
20 MIBs, management information-based objects, MIBs, in
21 each release of the EXOS software that contain SNMP
22 Research software.

23 So, these MIBs are relevant to showing how
24 Extreme's products utilized SNMP, and the number of MIBs
25 in the EXOS product appears to have changed over time

1 and grown over time, and we would like to explore how
2 the use of MIBs has changed and grown over time. That
3 would help us understand how extensively over time
4 Extreme's products have used our client's software and
5 in what respects.

6 THE COURT: Okay. Thank you. Can you address
7 that question?

8 MR. PRABHAKAR: Yes, Your Honor. I first want
9 to address the omission in 32. It was an error in the
10 document. I did not intend to mislead the Court. So,
11 to the extent that I was arguing that none of it is
12 limiting, I stand corrected.

13 THE COURT: Okay.

14 MR. PRABHAKAR: But it was entirely
15 unintentional. That's how I made an error in creating
16 this document, but that was inadvertent.

17 MIBS, or management information-based objects,
18 there is not a single claim in this case that refers to
19 MIBs. There is no copyright registration about MIBs.
20 There is not a person identified on plaintiffs' initial
21 disclosures about MIBs. There is no interrogatory
22 response that refers to MIBs. To the extent a witness
23 is necessary on MIBs, we don't understand the relevance
24 to this case at this point in time.

25 THE COURT: Well, can you respond to what

1 Ms. Rice just stated; that it would -- that they have
2 changed and grown over time and then that would show how
3 Extreme used the plaintiffs' software?

4 MR. PRABHAKAR: Your Honor, I -- fair point.
5 But that's not what the topic asked. Because if the ask
6 would have been how MIBs have changed over a period of
7 time, the delta is a much narrower topic than, tell me
8 everything about MIBs.

9 And that's not what we had discussed during
10 meet and confers. All we had heard during meet and
11 confers is MIBs is part of the software and, therefore,
12 we are entitled to it.

13 But if we use that logic, we just don't know
14 where to draw the line. This is the exhibit plaintiffs
15 attached. There is a MIB that talks to the agent.
16 There is an -- also a management station that talks to
17 the agent. Does that mean management stations are not
18 at issue in this case?

19 We have an SNMP agent in our products. Does
20 this figure show that now suddenly deposition testimony
21 on management stations is allowed, even though
22 management stations are not part of any claim in this
23 case?

24 Your Honor, 30(b) -- we are -- and I hate to
25 sound like a broken record because this really is a

1 burden issue for us. We are 24 hours of deposition
2 testimony in. At this point in time, we should be
3 focusing -- plaintiffs should have been focusing -- they
4 served a 40-topic notice -- should have been focusing on
5 exactly what they needed for this case. It seems
6 like -- not just on topic 37, but on 32 -- that they had
7 a narrower ask.

8 I'm not saying that the ask as stated on the
9 record was reasonably particular. I hesitate to take
10 that position. But it appears to me that they had in
11 their mind a specific scope which would have been
12 manageable. But that's not what they wrote initially.

13 When we met for six hours during meet and
14 confers and discussed narrowing of these topics, the
15 only narrowing that they provided for topic 32 was
16 removing the legally-problematic "including, without
17 limitation" language.

18 If they knew what they wanted after or during
19 the meet and confers, they would have said, yes,
20 Extreme, you have a valid point. This is really not the
21 full scope of what we want. We want to really know
22 where our -- to the extent we have three repositories,
23 but let's use that for the sake of argument. You have
24 one repository for EXOS products; you have one
25 repository for Brocade products, and you have one

1 repository for Enterasys products. Produce a witness
2 knowledgeable about -- and I'm not trying to craft a
3 topic on the fly -- the repository; do not ask for each
4 and every version of the source code.

5 So, that's what the meet and confer process,
6 which has been written in the federal rules, is for.
7 Because we agree. Sometimes it's not possible to craft
8 a topic which both parties would see eye to eye on.

9 And, as I said, just like the requestor wants a
10 lot, the producer wants a little. The meet and confer
11 process was meant to narrow topics so that they can
12 be -- witnesses can be designated.

13 We are satisfied that we will not be -- Extreme
14 is not being accused of not putting up an unprepared
15 witness. Plaintiffs are satisfied that they got the
16 information that they were looking for. But neither 32,
17 nor 37 reflect the narrowing that plaintiffs are
18 supposedly offering today. And we could have easily, if
19 these topics were reasonably particular, redesignated a
20 witness on engineering topics.

21 We designated two of them. There is no reason
22 why, going back, we could not have included this
23 specific change in MIBs as part of their deposition
24 prep. There is no reason why. And, actually, on source
25 code repositories, there is actually a topic that goes

1 to that that we prepared a witness on. 31. Your source
2 code for operating system contained in the
3 products -- it's not in red -- how is it maintained,
4 developed, inserted into the products?

5 That sounded incredibly similar to how
6 plaintiffs just described topic 32. There is a witness
7 who was designated on that. If 32, to the extent that
8 it's not overlapping with 31, was narrowly stated in the
9 first instance, one witness could have covered 31 and
10 32.

11 Now plaintiffs, after six hours of meet and
12 confer, articulate a new topic for 32, which is not
13 reflected in the original topic. It is extremely
14 burdensome on Extreme to now redo the wheel when this
15 could have been done right in the first instance.

16 THE COURT: Thank you.

17 MS. RICE: I will just briefly say with regards
18 to topic 32 where we had the meet and confer, we talked
19 about all of the things that were mentioned a moment
20 ago, commit logs, where the copies are stored. All
21 those different things were discovered or discussed in
22 the meet and confer process.

23 With regard to topic 27 -- or 37 -- excuse
24 me -- the topic specifically says the development of
25 MIBs. It does not say, tell us everything about MIBs in

1 the software. So, we understand that to mean what I
2 explained to Your Honor.

3 And during the meet and confer, we actually
4 explained why we believe that topic was relevant and
5 said the fact that the -- that you're using MIBs, that
6 Extreme is using MIBs, shows that it's using SNMP, and
7 how and to what extent. And we were told at that time
8 that counsel would take that back to the team, that that
9 did not seem to be something that would be difficult to
10 present a witness on and they just had the issue to find
11 the right person.

12 So, we do not understand what the problem with
13 this -- we think it's narrowly defined and they should
14 be able to produce the witness on it.

15 THE COURT: Thank you. All right. And the
16 last topic which is No. 40.

17 MR. PRABHAKAR: Give me one second, Your Honor.

18 So, Your Honor, the issue with topic 40 is that
19 the topic, as stated, requests one person to find out
20 persons knowledgeable about 39 of the topics. That is,
21 by definition, not reasonably particular.

22 But I understand what plaintiffs offered as a
23 compromise, and that kind of goes into this whole
24 narrative that we discussed during the meet and confer.
25 We explained this to you in the meet and confer. None

1 of that is reflected in the narrowing of the topics that
2 plaintiffs offered.

3 But on 40, I can put -- at least try to put
4 Your Honor to ease for two reasons. One, plaintiffs
5 actually have asked each of our witnesses about who is
6 the person who knows about this; who is the person who
7 knows about this. The most knowledge regarding that
8 subject is slightly problematic because most knowledge
9 may be in the eye of the beholder. I don't think
10 Extreme has a position, has one favorite child over the
11 other, like, who is the most knowledgeable engineer.

12 So, to the extent that the question, if we set
13 aside the "most" part, plaintiffs have asked, I think in
14 virtually every deposition or all depositions, who is
15 knowledgeable about certain topics, and they have
16 received that information.

17 We also have served responses to two. It's 15
18 and 17. And we have identified dozens of people by
19 interrogatory number where the interrogatory number is
20 essentially a proxy for that subject matter of people
21 who are knowledgeable on that topic.

22 And I know, Your Honor, this has been a long
23 day, so I don't want to go back and go find that
24 interrogatory response. But if Your Honor would like, I
25 can show that to demonstrate how many people we have

1 identified in written discovery through interrogatories.
2 And then plaintiffs also had the opportunity to ask
3 about knowledgeable people in the depositions. They
4 have asked that. The witnesses have provided answers,
5 whatever they knew. But other than that, we don't know
6 what's left to explore on this topic that's not already
7 been explored.

8 THE COURT: Are the -- in the depositions, are
9 they asking most knowledgeable or just knowledgeable?

10 MR. PRABHAKAR: Your Honor, I don't have all
11 those questions memorized.

12 THE COURT: You said the word "most" was
13 problematic.

14 MR. PRABHAKAR: Right.

15 THE COURT: That's why I was asking.

16 MR. PRABHAKAR: Yeah, and I think it may have
17 been a variation of, like, who is knowledgeable on this
18 topic. I don't want to exclude the possibility, but --
19 that they didn't ask most knowledgeable, but I do know
20 that they have asked at least who's knowledgeable on
21 their areas, and whatever the witness knew as related to
22 their topic, they have provided that testimony.

23 And I'm happy to pull that from the
24 transcripts, but I just don't know where it's --

25 THE COURT: Okay. Thank you.

1 MS. RICE: I feel like I almost heard an
2 agreement on that one. Maybe I'm wrong. But I feel
3 like what I heard was they're going to prepare and have
4 been preparing a witness to talk about who the person or
5 persons are that have the greatest knowledge on the
6 various topics.

7 THE COURT: I think what he said is: They have
8 prepared responses to 15 and 17, and then the witnesses
9 were being asked at the deposition and they're
10 responding to the best of their ability.

11 MS. RICE: And that's what we're understanding.
12 So, I'm not sure if this topic is really in dispute.
13 But all we're trying to determine is who are the people;
14 person or people. It doesn't have to be one person.
15 But they have identified quite a few, a number of people
16 with knowledge in their initial disclosures and their
17 interrogatory responses, and we're trying to figure out
18 who really has -- who are the true knowledge holders so
19 that if we need to go for a percipient witness
20 deposition, who we get. And it sounds like we're
21 getting that. So, as long as that continues, we should
22 be fine with that.

23 MR. PRABHAKAR: Your Honor --

24 THE COURT: Go ahead.

25 MR. PRABHAKAR: -- I want -- I want to quickly

1 respond that we're not agreeing that we're now going to
2 prepare a witness who is going to testify about persons
3 knowledgeable about 1 through 39. Our position is we've
4 already done that. Just so that there is no lack of
5 clarity to plaintiffs. This topic, we consider it
6 exhaustive.

7 THE COURT: Okay. All right. I want to take a
8 recess. I'm going to say it will be ten minutes, but it
9 may be a little bit longer. We'll check and make sure
10 everyone is in the courtroom before we start again, but
11 I'll try to limit it to ten minutes.

12 THE COURTROOM DEPUTY: All rise. This
13 honorable court stands in recess.

14 (A brief recess was taken.)

15 THE COURT: Okay. I want to go through the
16 topics with you and what my rulings are going to be.

17 So, starting with topic 2, the Court wants this
18 limited to the transfer action and what Extreme obtained
19 from Brocade. So, with that limitation, the topic can
20 stand.

21 Topic No. 3 can stand as stricken with
22 plaintiffs' proposal and, of course, these are limited
23 to the facts that would be questioned.

24 Topics Nos. 5 and 6, based on Extreme's
25 representation here today that the reference to

1 Enterasys was mistaken, topics 5 and 6 do not seem
2 relevant at this time. But that will be subject to
3 reconsideration if things change.

4 Topics 10 and 11 will be stricken. Comparable
5 is not defined, so these do not seem reasonably
6 particular.

7 For topics 15 and 17, the Court feels these
8 could be combined such that it captures what was
9 explained here today, in terms of what is sought. So,
10 for products that contain the subject software, the
11 plaintiffs are seeking the value of the product and then
12 broken down into apportionments of the valuable -- the
13 value that's attributable to the software versus the
14 portion that's attributable to other elements.

15 Topic 18 is too broad and the plaintiffs are
16 invited to rewrite it.

17 For topics 19, 20 and 27 through 30, those are
18 okay, provided they're limited to the factual basis and
19 subject to the rewrite of No. 20 that plaintiffs have
20 offered.

21 And topics 32 and 37 are overbroad.
22 Plaintiffs, again, are invited to rewrite those
23 as -- based on discussions here today.

24 And topic 40 appears appropriate with the
25 clarification -- it sounds like deponents have been

1 asked who they talked to and who was knowledgeable about
2 the subject. So, with that limitation, topic 40 appears
3 okay. So, those are the rulings on the 30(b)(6) topics.

4 So, with that, given the limitation on the
5 scope now, I would like to ask the parties to discuss
6 the fourth issue before we delve into it because this is
7 going into how many hours would be needed. And so now
8 that the scope is more defined, I would like you all to
9 talk about that to see if that can be resolved without
10 the Court's intervention.

11 And I'd like to go through the other matters
12 and then give you all a few minutes to kind of discuss
13 that and see if there is room for you all to come to an
14 agreement on that. And, if not, I'll take it up at the
15 end.

16 MR. PRABHAKAR: Your Honor, may I briefly ask
17 clarification on two topics?

18 THE COURT: Yes. Let me turn back. Yes.

19 MR. PRABHAKAR: What's the ruling on topic 3?

20 THE COURT: That it's okay as it stands with
21 the stricken language that plaintiffs proposed.

22 MR. PRABHAKAR: And for 40, you said the topic
23 is okay?

24 THE COURT: Yes, it stands given -- given that
25 they have been -- the deponents have been asked -- what

1 I understood -- with whom did they speak and their
2 knowledge and who is knowledgeable about the subject.
3 So, limited to those questions, it seems appropriate.

4 MR. PRABHAKAR: So, this is only -- so, now
5 when we designate a witness, do we designate on 40, or
6 just whoever is designated on the topics that the Court
7 has allowed, they provide that information?

8 THE COURT: It -- it's -- so, as I understand,
9 you're preparing responses that would name people that
10 have knowledge. So, with this, it would be the person
11 who is being deposed and these are the questions that
12 can be asked.

13 MR. PRABHAKAR: Understood, Your Honor. Thank
14 you.

15 THE COURT: Okay. So, then, I'll let you all
16 further discuss the timing limitation in a moment.

17 For the fifth issue, that's the plaintiffs'
18 request for an extension of its expert disclosure
19 deadline, the parties need to finish taking the Rule
20 30(b)(6), and then if there are any timing issues, you
21 need to meet and confer and file either a joint or
22 opposed motion, and the Court will take that up by
23 formal motion.

24 Similarly, with the sixth issue as to fact
25 witnesses, the parties need to take their depositions.

1 If you need additional beyond the ten, then you'll need
2 to file an appropriate motion with the Court.

3 If we can turn to your bullet point list. So,
4 with two exceptions, I'm going to give you specific
5 instructions for your position statements, and these are
6 the two exceptions: For -- let's see -- plaintiffs'
7 issue No. 6, the reopening of the Rule 30(b)(6)
8 deposition, you'll need to file a motion on that issue.

9 And for defendant's issue No. 5, the improper
10 withholding of certain documents on the basis of
11 privilege, you'll need to file a motion on that.

12 With regard to all the other remaining bullet
13 points, what I'll be asking you to do is to file a
14 one-page position statement, and the only attachments I
15 want to see are the discovery requests and the response;
16 nothing else. No e-mails or anything else.

17 I want the party making the request to file
18 statements by March 15th, and then responses will be due
19 March 22nd. And then I want to set a hearing to go
20 through all of these and get those resolved. And I want
21 you to look at your calendars for April 2nd and 3rd.

22 MR. WOOD: Your Honor, I just wanted to mention
23 I think our expert report deadline is April 2nd.

24 THE COURT: Okay.

25 MR. WOOD: So that day might be a pretty busy

1 day for us if the -- if we're moving the date. I guess
2 we may be filing a motion. I think Your Honor said you
3 want us to finish the 30(b)(6) depositions first.

4 THE COURT: Uh-huh.

5 MR. WOOD: And then meet and confer and then
6 come back to you about the opening report deadline?

7 THE COURT: Yes.

8 MR. WOOD: So, I don't know if it could be
9 possible to get a deadline for finishing the 30(b)(6)
10 or -- because our expert reports are due in a month.

11 THE COURT: Uh-huh.

12 MR. WOOD: If we're not able to get them
13 finished but we can't ask for an extension -- the reason
14 for asking for the extension is because we can't get
15 them finished. I mean, that's part of the reason for
16 the extension. And, so, if we're not able to get them
17 finished but yet we can't ask for the extension --

18 THE COURT: Well, if you're to the point where
19 you know for certain that you cannot, just -- I guess
20 the point being, you need to go ahead -- you need to
21 file a motion.

22 MR. WOOD: Okay.

23 THE COURT: I'm not going to take that up on an
24 informal discovery dispute basis.

25 MR. WOOD: Okay.

1 THE COURT: So --

2 MR. WOOD: Okay. All right. Thank you, Your
3 Honor.

4 MR. PRABHAKAR: Your Honor, just to confirm,
5 the 3rd is okay for Extreme.

6 THE COURT: Are plaintiffs available on the 3rd
7 to take up the bullet point list? I would like to start
8 at 10:30 again.

9 MR. WOOD: We're available on the 3rd, Your
10 Honor.

11 THE COURT: Then lastly, before you all meet to
12 discuss the timing of depositions issue, the parties
13 would have had an opportunity to see the Court's
14 Memorandum and Order, and I need some additional
15 briefing on the Extreme and Avaya Communications. So I
16 wanted to go over that briefing schedule with you. So I
17 would like to receive Extreme's brief on March the 11th,
18 and plaintiffs' response on March 25th, and defendant's
19 reply on April 1st.

20 All right. So, I'm going to -- I'll just take
21 a recess and let you all have a little bit of time to
22 see if you can make any headway on the number of hours
23 for the 30(b)(6). And you can just let Ms. Stone know
24 when you're ready and I'll come back out. Thank you.

25 MS. RICE: Thank you, Your Honor.

1 MR. LEE: Judge, I'm taking notes as fast as I
2 can. Will an order be submitted on this?

3 THE COURT: On the fourth issue?

4 MR. LEE: With respect to the 30(b)(6) topics.

5 MS. RICE: The full day's worth.

6 THE COURT: I'm sorry; I can't hear the
7 question.

8 MR. LEE: I'm sorry. We were taking notes
9 furiously; I think both sides.

10 THE COURT: Yes.

11 MR. LEE: With respect to the 30(b)(6) topics
12 narrowed, which ones are good and which ones are bad --

13 THE COURT: Yes.

14 MR. LEE: -- will an order be issued with
15 respect to that? I just didn't know.

16 THE COURT: We can do a short order so that you
17 have that.

18 MR. LEE: Okay. Thank you.

19 THE COURT: Okay.

20 THE COURTROOM DEPUTY: All rise. This
21 honorable court is in recess.

22 (A brief recess was taken.)

23 THE COURT: (Beginning of audio recording:) --
24 discussions. Whoever would like to address --

25 MR. PRABHAKAR: I just have one point of

1 clarification on one topic which might make things a
2 little simpler timing-wise.

3 THE COURT: Okay.

4 MR. PRABHAKAR: And I apologize for sitting,
5 Your Honor. So, Your Honor, you combined 15 and 17?

6 THE COURT: Yes.

7 MR. PRABHAKAR: In terms of putting up a
8 witness, it becomes a little tricky.

9 THE COURT: Okay.

10 MR. PRABHAKAR: Because 15 has financial
11 components to it, which means that we have to have,
12 like, one witness on a -- separate on 15. Nobody else
13 who is non-finance can have that knowledge. 17, which
14 is about value, is not necessarily quantifiable but
15 could be subjective value.

16 THE COURT: Okay.

17 MR. PRABHAKAR: So, I don't think I can put up
18 a finance witness who can also talk about the subjective
19 value, and I can't put up a technical witness or a
20 marketing witness who can then go over the financial.
21 So is there a way to -- given that 15, they have all the
22 profit calculations and everything, we can just talk
23 about the subjective value, which I understand Your
24 Honor's concern that they don't have that testimony. I
25 understand that concern. It's legitimate. So, if we

1 could just have 17, it might break the logjam on perhaps
2 the number of hours.

3 THE COURT: Okay.

4 MR. PRABHAKAR: That's at least Extreme's
5 proposal. But it's just a proposal, and I don't want to
6 say anything which suggests that we don't agree with
7 your ruling.

8 THE COURT: So, essentially it's to break them
9 apart again, the questions?

10 MR. PRABHAKAR: Correct.

11 THE COURT: Because you'll need a financial
12 person for 15 and a marketing person for 17?

13 MR. PRABHAKAR: Marketing or engineering or
14 someone like that.

15 THE COURT: Or engineering.

16 MR. PRABHAKAR: Right. And they're not
17 interchangeable in the sense that I can't put up one
18 person to do 15 and 17 is my guess.

19 THE COURT: Okay. And that will assist in your
20 estimation for the deposition time as well?

21 MR. PRABHAKAR: Yes, Your Honor.

22 THE COURT: Okay. All right. Given his
23 explanation, I'm inclined to do that.

24 MR. WOOD: We're completely fine with that,
25 Your Honor.

1 THE COURT: Okay. All right. So, I will
2 reverse my ruling on that and we will now treat 15 and
3 17 separately again. And, so, do you need further
4 discussions?

5 MR. PRABHAKAR: I think in terms of this
6 ruling, we can -- okay. I should probably just take
7 five minutes with counsel just so that we can see if we
8 can hammer this out. Not to take the time up anymore.

9 MR. WOOD: Maybe two minutes.

10 MR. PRABHAKAR: Yeah, maybe two minutes.

11 THE COURT: That will be fine.

12 (End of audio recording file.)

13 (Which were all the digitally-recorded
14 proceedings had and herein transcribed.)

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C-E-R-T-I-F-I-C-A-T-E

STATE OF TENNESSEE

COUNTY OF KNOX

I, Teresa S. Grandchamp, RMR, CRR, do hereby certify that I reported in machine shorthand the above digitally-recorded proceedings; that the foregoing pages were transcribed to the best of my ability to hear and understand the recorded file under my personal supervision and constitute a true and accurate record of the digitally-recorded proceedings.

I further certify that I am not an attorney or counsel of any of the parties, nor an employee or relative of any attorney or counsel connected with the action, nor financially interested in the action.

Transcript completed and signed on Monday, March 4, 2024.



TERESA S. GRANDCHAMP, RMR, CRR
Official Court Reporter